Public Utilities

FORTNIGHTLY

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May 9, 1940

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Public Utilities Fortnightly

VOLUME XXV *May 9, 1940* NUMBER 10

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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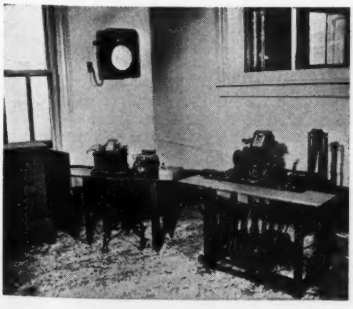

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Pages with the Editors

As we write these lines our ears still ring from arguments and counter-arguments which we heard during a debate on the question of whether President Roosevelt should run for a third term. The debate took place at the recent annual convention of the American Society of Newspaper Editors, held in Washington, D. C.

Oddly enough, the affirmative, as well as the negative, side of the third-term proposal was supported by prominent figures who have themselves been mentioned at one time or another as possible successors to President Roosevelt in the White House. Specifically, Secretary of Interior Harold Ickes and U. S. Senator Claude Pepper, of Florida, urged support for a third term. The well-known utility executive, Wendell L. Willkie, and the noted Republican leader, Dr. Glenn Frank, propounded the belief that somebody else should be given a first term (without, of course, mentioning Wendell L. Willkie or Glenn Frank, respectively).

While even the remote possibility that Mr. Willkie could become a party candidate for the presidential office naturally engaged our attention, we must confess that Mr. Willkie's boom, such as it is, seems quite unlike any other presidential boom we have ever seen hatched in or out of Washington.

RICHARD J. BEAMISH

If a utility's service to a customer offends the law, it should be cut off.

(See Page 586)

THOMAS L. NORTH

Uncle Sam does not let his left hand know what his right hand is doing about power rate policy.

(See Page 594)

First of all, there is the highly unorthodox attitude of Mr. Willkie himself, who not only declines to take his candidacy seriously, but refuses to tell anybody definitely which state (Indiana or New York) he would run from, if he did run, or even which ticket he would run on. Yet, political observers and newspaper writers appear enthusiastic about his ability, integrity, and "color." At the same time they seem almost unanimously, if somewhat reluctantly, to nominate Mr. Willkie as the candidate "least likely to succeed." Could this be a boom—or just a bouquet?

Even the violently antiutility writer, McAlister Coleman, in the socialistic magazine *The Nation,* concludes somewhat wistfully: "No matter what you think of his views, you can't help liking the man. . . . It's too bad that he doesn't take seriously this running for you know what."

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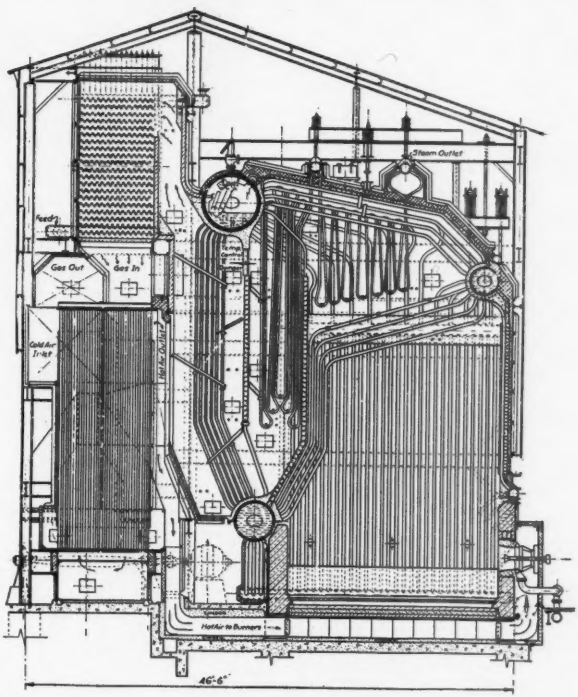

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OF course, there are some political sophisticates who hint that what Mr. Willkie is really running for may be the Court of St. James or the Secretary of Commerce, or a more plausible crack at the big prize in 1944. We wouldn't know anything about that. But inasmuch as the political columnists (including Democratic General Hugh Johnson) and other well-wishers seem quite unable to deliver the nomination to Mr. Willkie for 1940, we have been thinking, as a more practical matter, about another widely heralded candidate for a first term—Senator Taft of Ohio.

WE were wondering what Senator Taft thought about various political issues affecting utilities and whether these would become campaign issues if he were given the responsibility of carrying his party's standard in the forthcoming general election. While we were still pondering, HERBERT COREY, veteran Washington newspaper correspondent and author, walked into our office and revealed that he had been away ahead of us. COREY had interviewed Senator Taft on this very subject. The result is the leading article in this issue.

HERBERT COREY

He found Senator Taft's frankness quite unusual for a presidential candidate.

(SEE PAGE 579)

THERE has been a lot in the newspapers lately about the difficulty which telephone and telegraph companies have been having with public authorities over the question of permitting the use of their facilities for the dissemination of horse-race results and other gambling information. This naturally raises a question which, while not entirely new, has attracted scant attention from analysts of public utility law: Has a public utility any obligation to render service to an existing or prospective customer who is believed to be engaged in illicit enterprise? Or perhaps we should have stated that question the other way around: Has a utility an obligation to refuse or to discontinue service to a customer believed to be engaged in unlawful activities?

COMMISSIONER RICHARD J. BEAMISH, associate member of the Pennsylvania Public Utility Commission, has been a very active figure in this controversy, almost to the extent of conducting what Pennsylvania newspapers have described as a "one-man crusade" against alleged unlawful collaboration between communication carriers and gambling gentry in the Keystone state. At any rate, we thought that this experience preëminently qualified COMMISSIONER BEAMISH to discuss the subject and we put the matter up to him accordingly. The result is the article entitled "Responsibility of Utilities for Criminal Use of Service" (beginning page 586).

COMMISSIONER BEAMISH was born and raised in Scranton, Pa. But after studying law and becoming an assistant district attorney for Lackawanna county on the day he was admitted to the bar (his twenty-first birthday), he decided to follow the footsteps of his father, who had been owner and editor of the Scranton *Free Press*. His subsequent journalistic career carried him to Philadelphia and eventually to all parts of the United States, Europe, and South America. He is the author of a number of historical volumes. In 1926 he was appointed a member of the old Pennsylvania Public Service Commission by Governor Pinchot. He was appointed to the present public utility commission in 1937 by Governor Earle.

THOMAS L. NORTH, whose article, "Wanted: A Coördinated Federal Power Rate Policy," begins on page 594, is a graduate of the University of California (A.B., '31) and the Harvard School of Business Administration (M.B.A., '33). Since then his professional work has consisted primarily of analytical studies in industrial and public utility securities. He is now located on the Pacific coast as a field analyst for Standard Statistics Co.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

THE Securities and Exchange Commission, in denying authority to declare and pay dividends on junior preferred stock, states fully just why it does deny such authority. (See page 257.)

THE next number of this magazine will be out May 23rd.

The Editors

1 "She called me at five... said she was only half finished with a lot of figure-work her boss needs in a hurry... last month's percentage of sales increases for all their branches.

2 I can just see Marge now, working out those percentage problems with a calculating machine, doing each one twice and then copying the answer from dials. It used to be the same thing with me... but not any more.

5 The Remington Rand Printing Calculator is in thousands of offices today because it has outmoded all other calculating machines. And... if you've not been able to afford an adding machine *and* a calculator, here's the invention that gives you the best features of *both*... at little more than adding machine cost.

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3 I haven't had to work late one single night since we got our new Printing Calculator. It just eats up percentage problems... it divides automatically, you know! And it prints everything on the tape... gives me something permanent to copy from, or to file for reference."

4 *Flashback to Marge's office... Marge's boss speaking...* "Sorry to keep you so late, but it won't happen again. I learned something today over at Jim Robinson's office. He's replaced every last calculating machine with new Printing Calculators... I'm doing the same tomorrow."

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In This Issue

In Feature Articles

In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257–320, from 32 PUR(NS)

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Pairpoint Corporation.....New Bedford, Mass.
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U. S. Naval Academy.....Annapolis, Md.
Metropolitan Life Insurance Co....New York City
Park Chester Housing Development
Griesdieck Western Brewery.....Belleville, Ill.
Minot Normal School.....Minot, N. D.
Southland Paper Mills.....Lufkin, Texas
Bethlehem Steel Company.....Lebanon, Penna.
Norfolk Navy Yard.....Norfolk, Va.
Fairmont City Light Co.....Fairmont, Minn.
Evenson and Levering Company....Camden, N. J.
Socony Vacuum Oil Company.....Brooklyn, N. Y.
City of Bellefontaine.....Bellefontaine, Ohio
Gallinger Hospital.....Washington, D. C.
Colorado State Agricultural College
Fort Collins, Colo.
Navajo Agency.....Ft. Defiance, Arizona
Victor Chemical Company....Mt. Pleasant, Tenn.
McChord Field, U. S. Army....Ft. Lewis, Wash.
B. F. Goodrich Company.....Clarksville, Tenn.
Canadian National Railways. Winnipeg, Man., Can.
Carnation Compny.....Sherbrooke, Quebec, Can.
Alexandria Steam Generating Co...Alexandria, Va.
South Porto Rico Sugar Company
Santa Domingo, Dom. Rep.
George Ziegler Company.....Milwaukee, Wis.
Atlas Powder Company.....Stamford, Conn.
Colorado State Capitol.....Denver, Colo.
Hercules Powder Company.....Hercules, Del.
U. S. Military Academy.....West Point, N. Y.
Container Corporation of America
Circlesville, Ohio
Commodore Perry Housing Project...Buffalo, N. Y.
DeKalb State Teachers College.....DeKalb, Ill.
United States Shoe Corp.....Norwood, Ohio
The May Company.....Cleveland, Ohio
United States Naval Hospital...San Diego, Calif.
Frankford Arsenal.....Philadelphia, Penna.
Central Park Pumping Station.....Chicago, Ill.
Virginia Public Service Co.....Hampton, Va.
Atlas Powder Company.....Atlas, Mo.
City of Fairmont.....Fairmont, Minn.
Froedtert Grain and Malting Co..Milwaukee, Wis.
Sonoco Products Company.....Garwood, N. J.
Sheridan Brewing Company....Sheridan, Wyoming
City of Fort Collins.....Fort Collins, Colo.
Ingenio Riogaila....Buenaventure, Columbia, S. A.
South Carolina Electric and Gas Co....Parr, S. C.
American Woolen Company.....Fulton, N. Y.
Keystone Public Service Company.Oil City, Penna.
Alabama Power Company.....Chickasaw, Ala.
Pennsylvania Power and Light Co.
Harrisburg, Pa.
Holyoke Gas and Electric Co.....Holyoke, Mass.
Durkee Famous Foods.....Chicago, Ill.
Blanton Company.....St. Louis, Mo.
Continental Diamond Fibre Co..Bridgeport, Penna.
Westinghouse Electric and Manufacturing
Company, Lima, Ohio
Libby, McNeill and Libby.....Chicago, Ill.
Vanadium Corporation.....Naturita, Colo.
Philadelphia Electric Company....Chester, Penna.

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDITORIAL STATEMENT
American Bar Association Journal.

". . . a judge, and a man placed in judicial office, are not synonymous."

FIORELLO H. LAGUARDIA
Mayor of New York.

"The right to strike against the government is not and cannot be recognized."

WILLIAM L. GROSSMAN
Instructor in public utilities, New York University.

"In what fields, if any, can Federal regulation achieve more desirable results than state regulation?"

J. THORKELSON
U. S. Representative from Montana.

"Six years of emergency without a war is open to suspicion, and my suspicion is that something is wrong."

THOMAS E. DEWEY
District attorney, New York county.

"Our productive plant wears out at the rate of about $6,000,000 a year. That is our annual erosion of capital."

ROBERT H. JACKSON
U. S. Attorney General.

"Our jurisprudence is distinctive in that every great movement in American history has produced a leading case in this [Supreme] Court."

DAVID LAWRENCE
Editor, The United States News.

". . . the place to defeat radicalism and spendthrift policies is at the polls where Senators and Representatives are nominated and elected."

S. B. WILLIAMS
Editor, Electrical World.

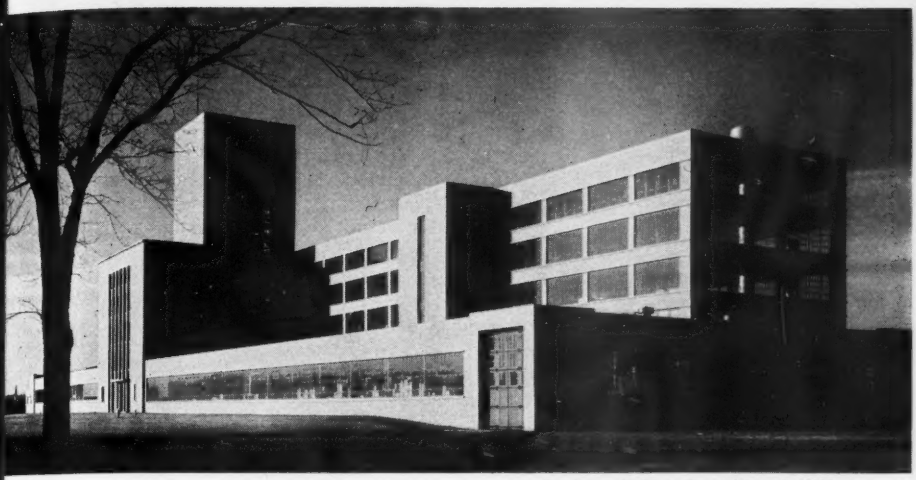
"The utility is one of the few constructive elements of American industry that is not willing to sit back and wait for conditions to improve."

EDITORIAL STATEMENT
The Texas Weekly.

"Economy in government can't be anything but a dream until the advocates of economy start making as much noise as the groups that continually demand more government spending."

JAMES C. RICE
Mississippi State Senator.

"The Federal Trade Commission has a volume a foot thick giving all the necessary information on corporations that [county] supervisors would require to fix a reasonable [utility] rate."



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MATTHEW M. NEELY
U. S. Senator from West Virginia.

". . . compared with the accomplishments of the Works Progress Administration under Harry Hopkins, the labors of Hercules become as trivial as a school boy's chores in the twilight of a winter day."

ROBERT A. TAFT
U. S. Senator from Ohio.

"The SEC has certainly gone far beyond its original purpose of protecting investors against fraud, and through its unnecessary restrictions and red tape has retarded the investment of money in private enterprise."

B. C. FORBES
Editor, Forbes.

"The people want more business, not more politics; more jobs, not more regulating. Government has been the fastest-growing 'enterprise' in America—also infinitely the heaviest financial loser."

FLOYD W. PARSONS
Editorial director, Gas Age.

". . . right now when a majority of our citizens are speaking of business as being only fair, American industries are spending substantially more for research work than they did at the very top of the boom that ended in 1929."

EDITORIAL STATEMENT
Broadcasting.

"Radio cannot afford to permit its program structure to dislocate itself because of this fad or that. Radio does not have to resort to a plethora of prize awards to attract its audience. We hope the effort will be toward deëmphasis of this technique henceforth, for the good of radio."

C. A. S.
Writing in Investor America.

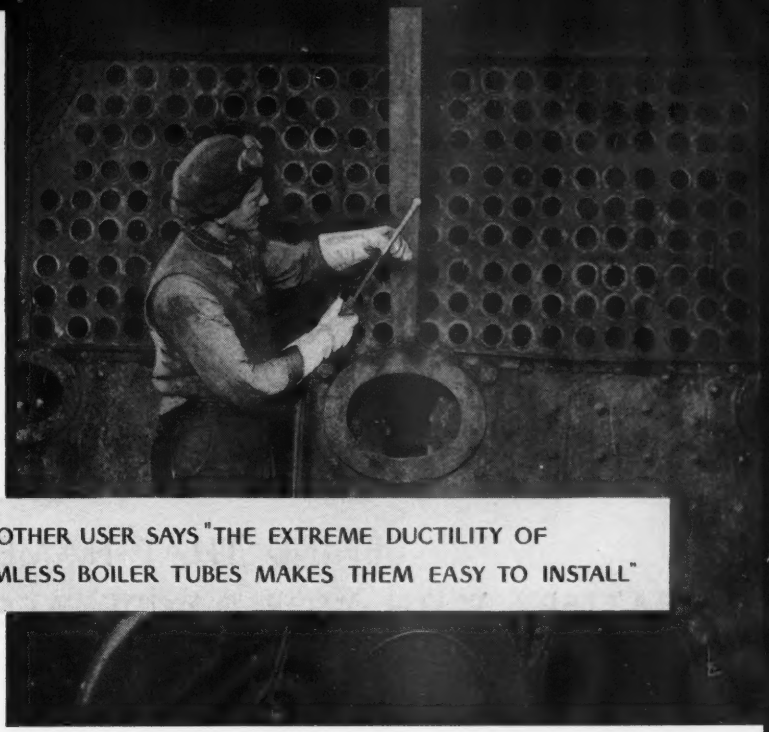
"The sort of irresponsible and wasteful government spending that has been indulgently referred to during the last few years as 'pump priming' has failed to prime any pumps. It should henceforth be regarded for just what it is, 'shot-in-the-arm' economics, with the supposed beneficiaries as the ultimate dope victims."

W. GIBSON CAREY, JR.
President, Chamber of Commerce of the United States.

"In connection with the SEC, . . . I have felt for years that some improvement was due in regard to financial information, whether on new issues or on company operating results. What we got, however, was a new bureau, which has harassed the honest man as well as the fraud and which, worse still, has retarded the flow of new money into productive enterprise."

EDITORIAL STATEMENT
Industrial News Review.

"Private industry cannot finance business, pay taxes, and serve the public without a profit—it would go broke. Political promoters who promise privileged groups of persons tax-subsidized electricity at 'cost' are robbing the general taxpayer and establishing socialism in the United States under the guise of 'community saviors,' to get votes or appropriations, the profit in politics."



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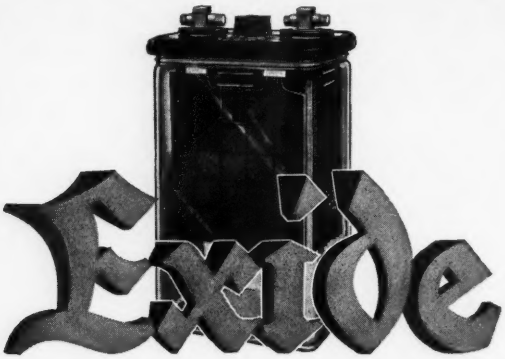

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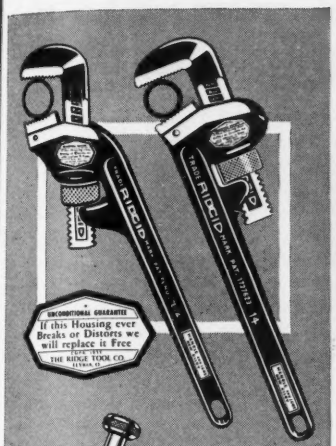

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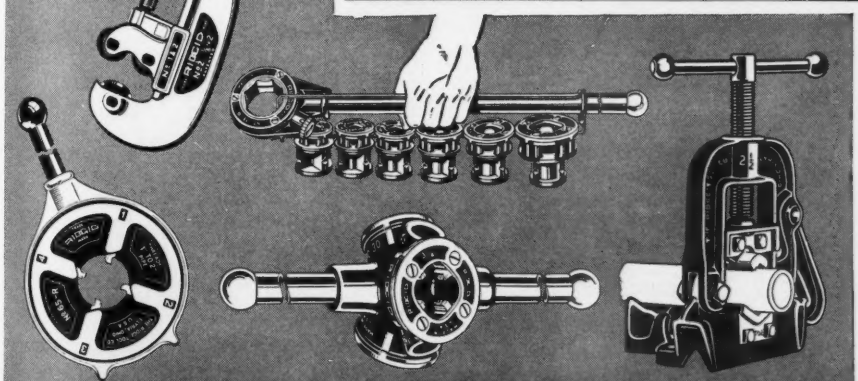
RIDGID PIPE TOOLS



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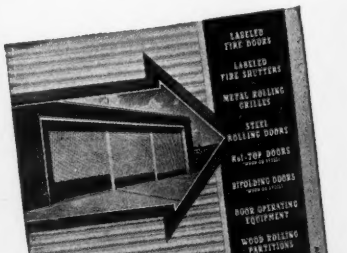

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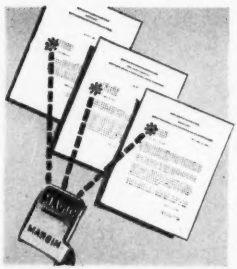

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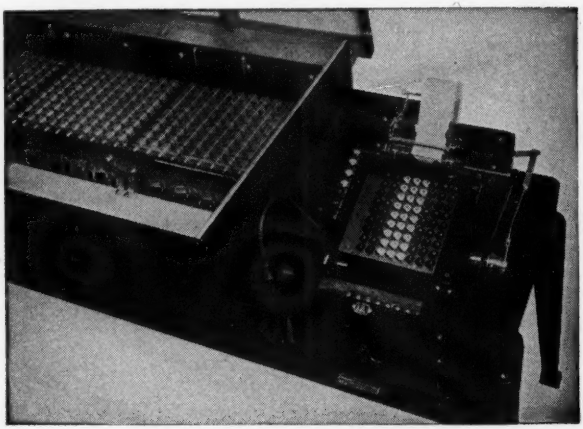

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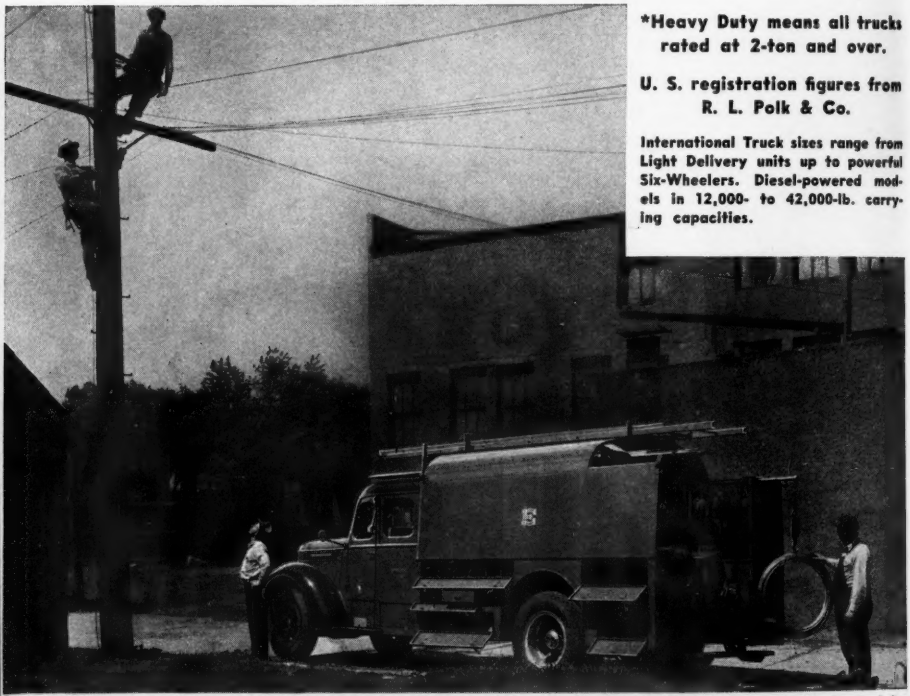

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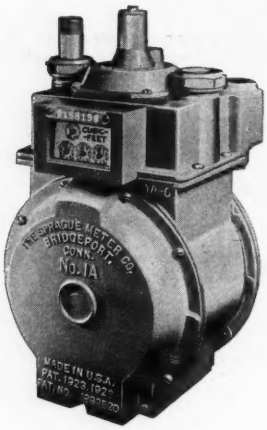

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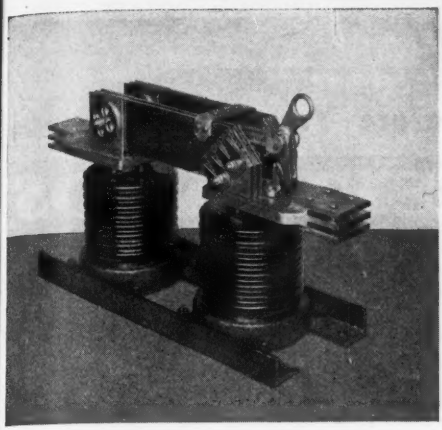

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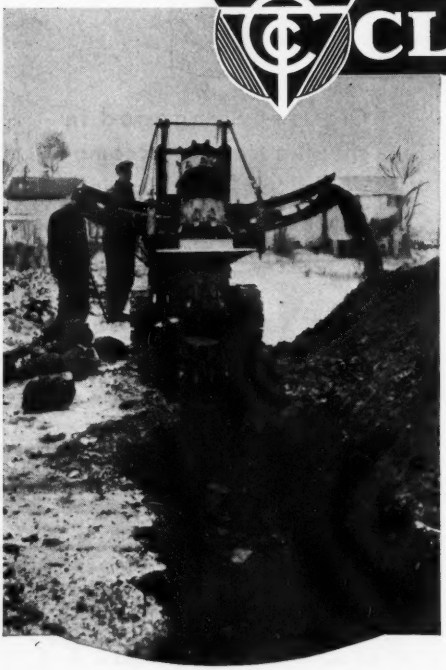

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CLEVELANDS

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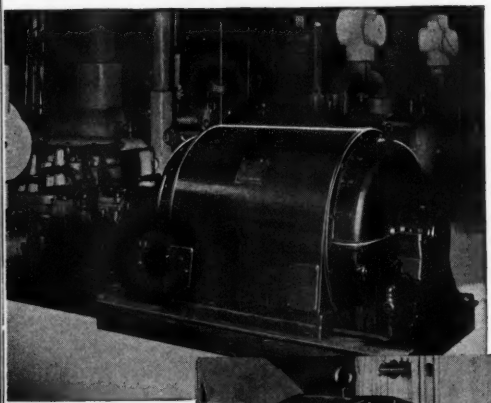
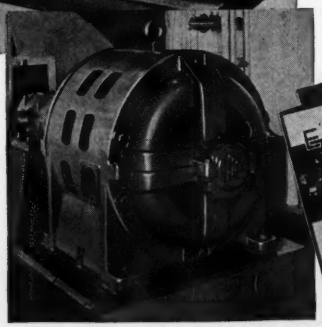
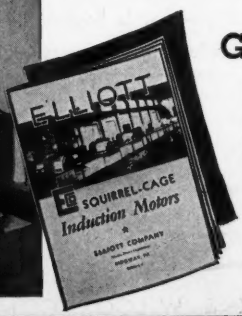


bove: Elliott 1250-hp., 600-r.p.m. squirrel-age motor driving igh-pressure boiler-eed pump for topping urbine.



ight: Elliott 75-hp., 50-r.p.m. squirrel-cage duction motor direct-onnected to induced raft fan.



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Utilities Almanack

MAY

9	Th	¶ *Southeastern Electric Exchange convenes, Roanoke, Va., 1940.* ¶ *Indiana Telephone Association concludes meeting, Indianapolis, Ind., 1940.*
10	F	¶ *Air Conditioning Manufacturers Association starts meeting, Hot Springs, Va., 1940.*
11	Sa	¶ *Central Transit Equipment Association will convene for annual meeting, Cleveland, Ohio, May 23, 24, 1940.*
12	S	¶ *National Electric Manufacturers Association starts spring meeting, Hot Springs, Va., 1940.*
13	M	¶ *Indiana Gas Association opens 30th annual convention, Evansville, Ind., 1940.*
14	Tu	¶ *Pennsylvania Gas Association starts convention, Skytop, Pa., 1940.* ¶ *National District Heating Association convenes, French Lick, Ind., 1940.*
15	W	¶ *National Association of Housing Officials opens session, Pittsburgh, Pa., 1940.*
16	Th	¶ *Pennsylvania Independent Telephone Association starts convention, York, Pa., 1940.* ¶ *American Water Works Association, Fla. Section, convenes, Jacksonville, Fla., 1940.*
17	F	¶ *Empire State Gas and Electric Association, Electric Operating Group, convenes, New York, N. Y., 1940.*
18	Sa	¶ *International Petroleum Exposition and Congress is opened, Tulsa, Okla., 1940.*
19	S	¶ *National Electrical Wholesalers Association opens convention, Hot Springs, Va., 1940.* ¶ *South Dakota Central Station Conference opens, Sioux Falls, S. D., 1940.*
20	M	¶ *American Gas Association starts joint production and chemical conference, New York, N. Y., 1940.*
21	Tu	¶ *Illinois Telephone Association will hold convention, Peoria, Ill., May 28, 29, 1940.*
22	W	¶ *Wisconsin State Telephone Association opens convention, Madison, Wis., 1940.* ¶ *American Management Asso. starts production conference, New York, N. Y., 1940.*

Photo by Ewing Galloway

The Pressure Gauge

Photo at Central Station, East 36th street, New York, of New York Steam Corporation. This is the largest boiler plant in the world devoted exclusively to supplying steam. It is one of five New York steam plants which serve all of Manhattan and Bronx in New York city.

Public Utilities

FORTNIGHTLY

VOL. XXV; NO. 10 MAY 9, 1940

Taft Said He Didn't Know

That, declares the author, is the most astonishing statement he has ever known to be made by a man in public life. Nevertheless, he characterizes the Ohio Senator as a man who answers questions and gives some of his answers to questions of great interest to utility and other business men.

BY HERBERT COREY

SENATOR Robert Alphonso Taft said that he didn't know.

That is the most astounding statement this observer has ever known to be made by a man in public life. All right. That may be an exaggeration. Or it may be a failure of memory. But I still do not recall any time at which any public man ever said he did not know the answer to anything he was asked. He may have shrouded his ignorance in hundreds of words. He may have backed against a wall and replied with today's favorite "no comment." He may have said that he had the matter under consideration. But no statesman ever before said to me: "I do not know."

This was the question:

"Should the supervision of industrial phases of the national defense program be exclusively supervised by the War Department, or should the Interior Department and other special advisory agencies be permitted to participate?"

There is enough political meat in that to furnish any politician an oratorical feast. Mr. Taft is at least interested in politics. No one knows where he stands in the race for the Republican nomination for President. He said that after June 24th he might go back to the farm. Fairly good guessers hold that he has at the moment of writing somewhere between 300 and 400 delegates, and while that is not enough to win the race it is a guaranty that he

will be in there trying. He might have taken that question and had a big time with it.

There is, for example, the matter of the Big Grid involved. Messrs. Corcoran and Ickes and Norris and the other leaders in the public ownership bloc have, with the aid of the SEC and the National Power Policy Committee, launched a plan which may make the Big Grid an actuality instead of an area of low pressure in the utility field. This is not the place to go into it extensively, for this is primarily a piece about Bob Taft, but it involves the establishment of a $200,000,000 high-tension grid linking the vital manufacturing centers at the joint cost of the government and the utilities concerned, under the fairly direct control of a government agency.

MR. Taft has, for instance, been opposing the present-day trend toward the centralization of government power. He said once that he began political life rather friendly to centralization. Perhaps that was shortly after he graduated from Yale and Harvard with degrees. The longer he studied centralization the less he liked it. Some people hold that a Big Grid under the control of a United States power authority would soon swallow all the other utilities and they base very horrifying conclusions on this assumption. Mr. Taft merely said that he was not familiar enough with the problem to express an opinion. He did not even say that he proposes to study the problem.

Any expert will say that this attitude is not "good politics."

Perhaps it isn't. But it is Taft's attitude and he has not done so poorly in politics. The experts used to refer to him as Bumbling Bob Taft. He seemed to have no defenses. If he were asked what he thought of a proposition, he came right out and told. He left open no line of retreat. He has kept inside the party lines because he is a believer in the party system, but inside the lines he has never hesitated to disagree when he thought the party was going wrong. His home town of Cincinnati was operated by a group of good politicians who set an all-time high for political efficiency. Decent citizens wanted a clean-up and his brother, Charles P. Taft, became one of the leaders in a nonpartisan movement. Bob Taft thought that if the local Republican organization were cleaned up, the city would clean along with it.

THE city was cleaned, and so was the organization, but no one would say that Bob Taft had become the idol of the politicians. It is the fashion to say that the Tafts have been powerful in Ohio politics, but it isn't true. William Howard Taft became President of the United States and the Ohio organization went along with him because that was the easy way, but it did not go so far as to give his brother, Charles P. Taft, the nomination for the United States Senate for which he was a candidate. Yet it was Charles P. who had the moneybags. The Tafts have always been esteemed by the people who do not get divorced and put money in the building associations and go to church on Sunday mornings, and these are the people in Ohio who carry elections. But they do not make nominations. Not as a rule. Not until they begin to get a little sore and let the air into the back rooms.

These people liked Bob Taft because he does not look on politics as a "game" and neither do they. What the politicians used to refer to as his bumbling —they do not any more—was completely expressive of the approach these people made to public questions. They were interested and serious and they wanted to know the answers. In 1921 he was elected to the Ohio house of representatives from Cincinnati because he was interested and serious and wanted to know the answers. He was a Taft, too, and that did not hurt him. He was not then and he is not now a spirited campaigner. He is not precisely a diffident man and he certainly is not a timid man, but he gives out a kind of an aura of diffidence. This is as fallacious as is conceivable. A good guess might be that he prefers books and fact finding to people without being at all unfriendly. It may be that he has a slight difficulty in adjustment. Most of the people he has met in public life begin each conversation in a mildly inane way. A serious-minded man perhaps finds this a waste of time.

THE second year after he became a member of the Ohio house he had learned so many of the answers that he was made floor leader by the Republicans. In his second term he became speaker. Even yet he had not become the idol of the Republican politicians in Ohio, who are even more addicted than politicians usually are to clay feet on their idols. But he was a hard-hitting young man who had what must have seemed to them an unwholesome liking for facts. No one has ever called him eloquent and no community has ever asked that he deliver the Fourth of July speech, but he is hard to handle in debate. He is always courteous, for one thing — and that is hardly in the senatorial tradition—and he keeps his eye on the ball. In the last year or so Senator George W. Norris of Nebraska has started innumerable rabbits down the Senate aisle in his debates with Taft without tempting the Ohioan to depart from his insistence that the Nebraskan answer the question.

In 1931 Taft was sent to the Ohio senate. An unpleasant tax situation had developed in the state municipalities, and Taft had been looking into it and had the answers. Then a national situation developed in 1932 and he was defeated for reëlection along with most other Republicans. Perhaps he had the answers even then, but not many listened to him. He went back to his comfortable law practice in Cincinnati, somewhat blistered inside by his defeat. Externally Taft seems to be an easy-going man, with a nice if unobtrusive sense of humor, and mild blue

❦

¶ "IT *is the fashion to say that the Tafts have been powerful in Ohio politics, but it isn't true. William Howard Taft became President of the United States and the Ohio organization went along with him because that was the easy way, but it did not go so far as to give his brother, Charles P. Taft, the nomination for the United States Senate for which he was a candidate. Yet it was Charles P. who had the moneybags.*"

eyes and an apparent surplusage of teeth and a friendly disposition, but he is also a hard loser. He has never been reconciled to defeat. This might safely be ascribed to his devotion to the cause of fact. If what he believes to be a fact proves to be false, he abandons it without hesitation, but he must first be convinced.

He is a stubborn man.

It is possible that this trait was responsible for his election to the United States Senate. Ohio had been going Democratic in a big way and William J. Bulkley, the Democratic incumbent, was well liked. A series of joint debates was arranged much to the discomfort of Taft's political advisers. They feared he lacked those easy graces which are so persuasive over the radio, and Bulkley had the weight of the national administration back of him. Their first meetings were to be in the industrial cities of Ohio, and his advisers feared the audiences would be hostile. They were hostile, but to the amazement of the experts they were impartially hostile. Both speakers were razzed unmercifully. Their voices could not be heard by the listeners who saw them, and Bulkley quit in disgust. Taft realized that the distant auditors could hear what he had to say and that the roars of the hecklers in the halls might be tuned out by the radio controllers, and so he stubbornly went on with his recitals. He made his talk in each of the industrial cities and he was implacably good-tempered and inaudible in the halls, but the folks in the country districts heard him. So did the folks in the industrial cities, for that matter. He carried nearly all of them along with the state.

The conviction of all the elder members of the United States Senate is that the new-made members should not utter a sound on the floor for at least a year. This conviction has been severely assailed by some of the freshmen. Notably, Huey Long of Louisiana ran it in reverse. It was Mr. Long who uttered most of the sounds. Taft did not precisely stick out his chin during his first year, but he continued to ask for the answers. It was not enough for him to get free haircuts, free snuff, free steam baths and stationery, and other free things because he was a servant of the people. The club features of the Senate did not appeal to him so much as the fact that it is a legislative body in which it is possible, D. V., to get things done. Messrs. Barkley and McKellar and Norris and other first settlers reproved him for his insistence on answers. Quite probably his feelings were hurt. Almost anyone's feelings would be hurt. But he invariably arose with the courteous suggestion that, this business of belaboring having been concluded, he would now ask the honorable gentlemen to answer his questions. He was not at any time eloquent or humorous, but he had been given to understand that such and such was the case and he wanted to know.

During the debate on granting an appropriation for the completion of the Gilbertsville dam — the latest and tallest of the TVA brood—he manifested no particular opposition to the TVA project as a whole. His position was that the government had put a lot of taxpayer money into the TVA and he wanted to make the TVA work and get some of that money back if possible. But he had not been convinced

Plan for Balancing the Budget

"THE Taft plan [for balancing the national budget] involves getting rid of a large number of the approximately 1,000,000 Federal employees, all of whom have voting relatives, and the canceling of a lot of bureaus and activities, all of which spend the public money. He named the bureaus and activities."

that it would be good business to spend another hundred million dollars or two hundred million dollars on Gilbertsville—the TVA advocates did not seem to know just how much it would cost—unless the dam were needed. The building was not being advocated for power-making purposes, he observed, and flood control and navigation could be better served at less cost if smaller dams were constructed. He never did get the answers he wanted from the TVA Senators. But he went right on asking for them.

THIS persistence in asking resulted in his becoming a candidate for the Republican nomination for President. Thanks to his calm insistence on facts and his equally calm disregard of the lofty flights of his fellow Senators, he was recognized as a dangerous man in debate. In other respects the experts were unanimous in their verdict that he did not shine. Speakers at the Gridiron Club dinners are expected to scintillate. Taft's talk was a prize bumble. He has been friendly to organized labor, but he walked through an A. F. of L. picket line at Kansas City. He gave the New Deal's corn-loan policy particular hell in Iowa on the very day that Iowa's farmers were getting $70,000,000 in nice new corn-loan cash. He said the national budget must be balanced or the country would be bankrupted.

President Roosevelt laughed at this and wanted to know how Taft would balance it. Taft told him. The Taft plan involves getting rid of a large number of the approximately 1,000,000 Federal employees, all of whom have voting relatives, and the canceling of a lot of bureaus and activities, all of which spend the public money. He named the bureaus and activities. Again the experts agreed that Taft did not know how to play politics. They regarded him with what would have been pity except that by not knowing how to play politics he had apparently

acquired between 300 and 400 delegates to the Republican national convention. He may not get anywhere near the nomination. But by apparently disregarding everything but his thirst for facts, he seems to have gotten the delegates. In the course of getting them he has, so far as can be seen, answered every question put to him. When he cannot answer a question he says so. It has been pointed out that for most men in politics this is a hard thing to do.

I ASKED him some questions that seemed worth answers:

"Should the program of public power development by the Federal government in connection with navigation continue to be expanded? Or should the public funds be devoted to other purposes?"

"The first thing to do," said he, "is to balance the budget. Get back on an even financial keel." It seemed to him that there had been enough development along this line for the present. If more public power is needed in the future, that can be taken up when the time comes on the basis of the facts as disclosed. But balance the budget. Stop spending money where money spending can be avoided. We should begin to examine our financial position. Save where we can.

"Should existing or future public power projects be truly self-liquidating, providing for cost accounting comparable to private operations?"

"Yes. Certainly."

"Should they be conducted in such a way as to make provision out of their own earnings for the replacement of tax revenue loss through the dislocation of private enterprise?"

"Yes."

"Should such public power operations be under the control of some independent, centralized system of regulation?"

"Yes. But not essential."

"Should the regulation of holding companies under the SEC integration program be subjected to a reëxamination by Congress?"

"The whole power of the SEC should be reëxamined."

"Should the telephones, railroads, gas, and electric industries generally be encouraged and given hope of continued profitable operation under public regulation?"

"Yes."

"Or should such encouragement be exclusively reserved for rival public ownership agitation?"

"No. There is nothing which so completely discourages the growth of private business as government competition, and it is impossible to compete with an institution which has no need of balancing its budget. In the TVA, in certain parts of the housing program, and in other fields, government has gone into business itself. There is a determined hostility in many government departments to the development of private industry. The government includes many men who desire to change our system to a form of state socialism. You can see it in much of the action taken by government departments before the TNEC. They seem to be more anxious to prove that private industry cannot be carried on in free competitive style than they are to remove restraints on business activity.

"The SEC has certainly gone far

beyond its original purpose of protecting investors against fraud, and through its unnecessary restrictions and red tape has retarded the investment of money in private enterprise.

"Nothing threatens to throttle small business today as much as the wage-hour law. Big business can conform. Little business often cannot do so and survive. I believe it should be amended to put in effect merely a minimum-wage law—one to protect oppression in those cases where the ordinary processes of collective bargaining do not work because of lack of organization. If the government once assumes the job of fixing wages, there is no place left for democratic leadership among the employees themselves. Let us put a ceiling over hours and a floor under wages, but let us make sure there is plenty of head room left between the floor and the ceiling for the development of new enterprises in every section of the United States.

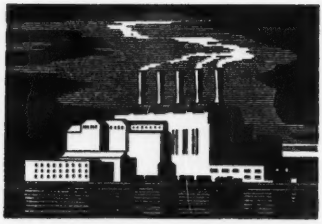
"As far as possible necessary laws should be police regulations, enforced on the complaint of those who may be injured, and not administered on hypothetical and theoretical grounds by thousands of agents running loose over every business and every farm in the United States. It is right for government to be a policeman to keep open the traffic of free enterprise, but not to be the maiden aunt of every business. Big business is not the leader. Most big businesses are likely to reach a point at which they are more or less stable. When times are prosperous they increase employment, and when times are poor they decrease employment. But sound growth depends on the constant influx into the economic system of new enterprises which put one man to work, then two men, then hundreds of men and, in rare cases, thousands of men. This whole process has been stopped. More men have gone out of business in the last six years than have gone in.

"THE small-business man is more discouraged than the big-business man because he must do his own bookkeeping and reporting. Every other day some government agent drops in to read his reports and make him do them over again because some bureaucrat in Washington has ruled that he isn't keeping his books the way they should be kept. He has almost as many agents calling on him as the farmer has. He hasn't time to attend to his own business and certainly not time to develop new ideas and expand that business. This is the actual condition in the United States today, which has checked all initiative and all enterprise."

This is enough to show in what direction Robert Alphonso Taft is headed. No concealment about it. He answers questions.

¶ "WE *have always had public works. We wrested the country from the wilderness by public works. Through public works we provided schools for our children, hospitals and institutions for our sick and indigent. We are civilized in part by reason of our public works. As our country continues its development, our building of public facilities must continue with it.*"

—JAMES M. MEAD,
U. S. Senator from New York.



Responsibility of Utilities for Criminal Use of Service

In this article are presented a nonutility and a utility view of a nice legal question which courts and commissions are being more frequently requested to answer.

By RICHARD J. BEAMISH
COMMISSIONER, PENNSYLVANIA PUBLIC UTILITY COMMISSION

Is a public utility responsible under the law for knowingly and deliberately performing actions or contributing to actions that are in themselves illegal?

This question was presented to the Pennsylvania Public Utility Commission recently when police authorities in Philadelphia and other cities and the Pennsylvania motor police raided gambling establishments in which Bell Telephone equipment in large quantities was seized.

Investigators connected with the telephone division of the Pennsylvania Public Utility Commission's engineering bureau were assigned to inquire into and report upon the extent to which the Bell Telephone Company participated in the establishment and maintenance of these gambling houses. The reports appear to establish conclusively that Bell Company's employees who arranged for and participated in the setting up of telephone equipment had full knowledge that the equipment was to be used for gambling purposes. The investigation proved further that the Pennsylvania gambling houses were connected by the Long Lines Division of the American Telephone and Telegraph Company with distributing telephone stations outside Pennsylvania and near the borders of that state in Maryland, Delaware, New Jersey, New York, and Ohio. The Bell of Pennsylvania disclaimed any responsibility under the criminal laws for its actions. It maintained that it was obliged to serve the public generally. It also argued that it could be held civilly liable if it refused to furnish such general service or if, having entered into a contract with any subscriber, it failed to render service.

The broad question of responsibility

under such conditions is now before half a dozen tribunals. It is a question which involves the maintenance of what some states conceive to be law and order.

PENNSYLVANIA is a nongambling commonwealth. Since 1860 the general statute prohibiting gambling in Pennsylvania reads, in its principal provision:

> If any person shall keep or exhibit any gaming table, establishment, device, or apparatus, to win or gain money or other property of value, or aid, assist, or permit others to do the same; or if any person shall engage in gambling for a livelihood, or shall be without any fixed residence, and in the habit or practice of gambling, he shall be deemed and taken to be a common gambler, and upon conviction thereof shall be sentenced to an imprisonment, by separate or solitary confinement at labor, not exceeding five years, and to pay a fine not exceeding $500. (Act of 1860, P. L. 382, § 56, 18 PS § 1421.)

A clearer definition has been made of gambling in *Re* Brua's Appeal:[1]

> Anything which induces men to risk their money or property without any other hope of return than to get for nothing any given amount from another, is gambling, and demoralizing to the community, no matter by what name it may be called. It is the same whether the promise be to pay on the color of a card, or the fleetness of a horse, and the same numerals indicate how much is lost and won in either case, and the losing party has received just as much for the money parted with in the one case as the other, *viz.;* nothing at all.

It is clear that the setting up of a gambling room is in itself illegal in Pennsylvania. Is Bell Telephone of Pennsylvania a party under the law in the performance of such illegal act?

The test clearly is whether it enters into the purpose of setting up a gambling house with open eyes and full knowledge:

> Every one who does enter into a common purpose or design is generally deemed in law a party to every act which had before been done by others, and a party to every act which may afterwards be done by any of the others *in furtherance of such common design.* 1 Greenl. Ev. 111.

IT is an axiom of law that no corporation, firm, or individual can be compelled by any contract to perform any act or function that in itself is illegal. Corollary to that axiom is the maxim that anyone who performs any action or function that in itself is illegal must abide by the consequences of that action.

If these pronouncements be true, can a corporation be adjudged guilty and held to the same measure of responsibility as an individual?

In the course of a decision rendered January 29, 1940, Federal District Judge Ernest A. O'Brien discussed this question. The issue was the liability of the Consumers Power Company of Michigan for supplying natural gas to operators of illegal liquor stills in Mt. Clemens, Michigan. Judge O'Brien said:

> It is not clear in the minds of many persons whether a corporation can be found guilty of intent to violate the law, but it is perfectly clear in the mind of the court that it can. If a corporation was not guilty of intent to violate the law (by supplying gas to illegal stills), it could not have made a contract (for service). Any public utility corporation has the legal right to refuse service to any customer if there is reason to believe the service may be used for unlawful purposes. Any person to whom service is refused, if he believes he is injured, can appeal to the proper state utilities commission.

It is interesting to note that the defense of the defendant company was that it was obligated to serve anyone who applied to be served with gas. The company and two of its employees were found guilty by a jury in this case and fines were imposed.

[1] (1867) 55 Pa 294, 298.

The drive against bookmaking establishments has resulted in a number of recent decisions most of which are not as yet officially reported.

IN New Jersey, George L. Goodman, owner of *Goodman's Scratch Sheet,* sought an injunction against the New Jersey Bell Telephone Company to compel that company to continue furnishing telephone service to him. Vice Chancellor W. F. Sooy, on February 20, 1940, refused to restrain the company from cutting off wire service. The Vice Chancellor said, in part:

> I have had some experience in this world myself, and I can't close my eyes to the existence of twenty-three private wires. . . . It is quite evident that the twenty-three phone extensions were used in the furtherance of bookmaking practices.

Similar actions in equity have been brought against other subsidiaries of American Telephone and Telegraph Company, and in no instance have the courts compelled the companies to furnish facilities for race-track information purposes.

On the Pacific coast it was held by Judge Emmet H. Wilson, of the superior court of Los Angeles, California, on January 11, 1940, that telephone companies have a right to discontinue service to any subscriber who they have reason to believe is violating or assisting in violating the gambling law. In that case the court refused to issue a restraining order against the Southern California Telephone Company to compel that company to furnish its facilities for use by the *Pacific Scratch Sheet.* The racing paper used 100 private telephone lines and claimed that the discontinuance of service would result in a serious and heavy loss. The Pacific Telephone & Telegraph Company has disconnected many private lines formerly serving bookmaking establishments and has announced that no new telephone service would be permitted to those locations discontinued unless the applicants can satisfy the police and the telephone company that the service will not be used for illegal purposes. All America Cables and Radio Company announced on February 28, 1940, that it would cut off service from race tracks from Havana, Cuba, to New York. The Michigan Bell Telephone Company, on February 2nd, issued a similar order in compliance with a Detroit grand jury request.

SEVERAL undecided cases are still before the courts. In Florida, Walter M. Hagerty has brought an action against Southern Bell Telephone & Telegraph Company to compel the latter to furnish facilities for race-track information purposes. From the pleadings it appears that Mr. Hagerty proposes to use the wire facilities to receive sport information, including race-

¶ "IT *is an axiom of law that no corporation, firm, or individual can be compelled by any contract to perform any act or function that in itself is illegal. Corollary to that axiom is the maxim that anyone who performs any action or function that in itself is illegal must abide by the consequences of that action.*

track information published in a scratch sheet. After a hearing on January 20, 1940, the court took the case under advisement. Likewise pending is the suit of William M. Hamilton, of Youngstown, Ohio, a horse-race information distributor, against the Western Union Telegraph Company. Hamilton seeks a permanent injunction to prevent the Telegraph Company from discontinuing the service between his Youngstown office and customers in Cleveland, Cincinnati, Camden, and Canton.

In Illinois, State Senator Daniel A. Serritella, operator of two horse-race tip sheets, continues to receive service temporarily from the Illinois Bell Telephone Company. The latter notified Senator Serritella that service would be cut off but the Illinois circuit court has issued a temporary injunction against the telephone company, after the Illinois Commerce Commission, on January 24th, ordered the service cut off. In this case, as in others, it was argued that the customer was merely printing sport news and was not engaged in violating the law. That argument was not successful in the New Jersey or California cases.

In People ex rel. Restmeyer *v.* New York Teleph. Co.,[2] it was held that a telephone company could not by mandamus be required to furnish service to a saloon, where the latter was used as a pool room and bookmaking establishment. Likewise, in Cullen *v.* New York Teleph. Co.,[3] mandamus was denied where the company refused to render service to an applicant who had been a frequenter of a place where the police had previously ordered the telephone removed for illegal use thereof.

H. L. Cooper of Steubenville, Ohio, operator of a horse-race information agency serving western Pennsylvania and eastern Ohio, petitioned for an injunction to prevent the Bell Telephone Company of Pennsylvania from discontinuing service to his agency in Pittsburgh. A hearing on the petition was set for March 25, 1940. Cooper maintained in his petition that his business was lawful and the utility must serve him under the law.

What penalties may be imposed upon utilities convicted of these violations?

A cease and desist order was named by the Pennsylvania Public Utility Commission in the complaint against the Bell Telephone Company of Pennsylvania, Complaint Docket No. 12589,[4] in which the Bell Company was charged with furnishing service through leased wires to the Nationwide News Service, Inc., and its affiliates.

The case of the Consumers Power Company of Michigan, heretofore cited, adds to this cease and desist penalty a heavy fine.

The recent indictment by a Federal jury in Chicago of certain persons connected with the Nationwide News Service, Inc., was followed by service of the indictments upon officers of the American Telephone and Telegraph Company and the Western Union Telegraph Company. The indication implicit in that service was that action would be taken by the Federal Department of Justice against the wire com-

[2] (1916) 173 App Div 132, 159 NY Supp 369.
[3] (1905) 106 App Div 250, 94 NY Supp 290.
[4] (1938) 25 PUR(NS) 452.

Discontinuance of Service to Bookmakers

"THE Pacific Telephone & Telegraph Company has disconnected many private lines formerly serving bookmaking establishments and has announced that no new telephone service would be permitted to those locations discontinued unless the applicants can satisfy the police and the telephone company that the service will not be used for illegal purposes."

panies if they should persist in service essential to race-track gambling.

The ultimate penalty may be cancellation of a certificate of convenience.

This was indicated when Connie Mack and the Athletics Baseball Club of Philadelphia were haled before the supreme court of Pennsylvania, charged with playing Sunday baseball at a time when Sunday baseball was illegal in Pennsylvania.

The Athletics had played a test game on Sunday and had been fined a small amount, I believe $4, by a magistrate. Plans were made to continue Sunday games and to pay the small fines provided by law. Chief Justice Robert von Moschzisker, speaking from the bench, warned Mr. Mack and counsel for the Athletics that if the club persisted in violating the Sunday law, cancellation of the club's charter might result. That stopped the Athletics until baseball games on Sunday afternoons up to the hour of 6 o'clock were legalized by statute.

THIS is not the place to set forth records concerning the amount of knowledge or the kind of knowledge of the activities of bookmakers possessed by the wire companies. This is a matter now being passed upon by the various courts and commissions.

It is sufficient to point out that the cards kept in the Bell Company's own files showed such occupations as "gambler," "bookie," "bookmaker," etc. This was developed during a recent legislative investigation of the race-track wire service in Pennsylvania.

The United States Department of Justice and the Federal Bureau of Investigation together with the Federal Communications Commission are conducting their own inquiries.

I concede that proof of such knowledge is essential in the trial of these issues. I maintain that with the establishment of such proof of guilty knowledge a public utility may properly be penalized for knowingly and deliberately furnishing service for illegal actions by those whom it serves.

If, for example, a trucker holding a certificate of public convenience for common carriage were found to be serving knowingly a gang of bootleggers in the distribution of illegally manufactured liquor, his certificate could be canceled by the state commission that granted it.

If a certificate holder doing business

as a taxi concern were knowingly to devote any of its equipment to the transportation of robbers or other persons engaged in illegal acts, cancellation of its certificate, in my opinion, would be justified.

Artificial persons have the same duties concerning the preservation of law and order as natural persons.

In conclusion, it is my opinion that law courts and the administrative bodies charged with the regulation of corporations doing business as public utilities have power to inflict penalties up to and including the death sentence upon law-violating utilities which deliberately participate in these violations.

ON March 15, 1940, I wrote to William H. Lamb, general counsel of the Bell Telephone Company in part, as follows:

"In accordance with my conversation with you yesterday I am sending to you a draft of my proposed article for the PUBLIC UTILITIES FORTNIGHTLY.

"If you find anything that strikes you as unfair or untrue I would like to have your comment."

On March 19th I received a letter which in fairness to Mr. Lamb and the Bell Telephone Company of Pennsylvania I herewith append:

"I am reluctant to express an opinion on the article lest you misconceive the spirit in which my comments are made. However, inasmuch as you have requested, I may say that, in my opinion, your article does not properly present the problem, but on the contrary, is misleading and, in some of its statements as to this company, entirely unfair.

"As illustrative of such unfair statements, let me refer to that in the third paragraph, page 586 of the article, that:

> The reports appear to establish conclusively that Bell Company's employees who arranged for and participated in the setting up of telephone equipment had full knowledge that the equipment was to be used for gambling purposes.

"I believe that statement to be contrary to the fact.

"Likewise, I believe your article gives an inadequate presentation of the Pennsylvania law relating to telephone companies.

"BY the Pennsylvania law statutes the telephone company is required to furnish service without discrimination. Also, the company is forbidden to divulge the contents of any telephone message—in fact the recently adopted Penal Code[5] makes it a crime so to do. You will recall that § 688 provides, *inter alia:*

> All messages and conversations shall be transmitted over any line of telegraph or telephone without being made public or their purport being in any manner divulged, and in all respects the same inviolable secrecy, safekeeping, and conveyance shall be maintained as is enjoined by the laws of the United States in reference to ordinary mail service.

"This continues the policy of the law in effect since 1851,[6] but increases the penalties for violation. The superior court has said the dissemination of horse-race news is not illegal in Pennsylvania. In the American Telephone and Telegraph Company's ap-

[5] Act of June 24, 1939, P. L. 872.

[6] See Acts of April 14, 1851, P. L. 612; March 31, 1860, P. L. 382; July 10, 1901, P. L. 651.

peal,[7] the court (Keller, P. J.) said:

> Appellant's position is correctly and concisely stated in the following excerpt from the argument of its learned counsel: "The one-way teletype is not betted upon. It does not receive or transmit the moneys bet. It does not record the bets. It does not determine the winners. It simply receives information, which information enables the gamblers to ascertain the results of the event on which they have wagered. The furnishing or receiving of racing or sporting information is not gambling and is not a crime. Therefore, the mechanical facility which enables such information to be furnished or received cannot be said to be a device or instrument for gambling.
>
> However desirable it may be to stamp out the gambling evil—and we are in full accord with the purpose—we cannot extend the provisions of the Criminal Code respecting it beyond their plain and clearly intended meaning. The court can probably make the enforcement of the act more effective in cases like this one, where the instrument employed as the means of securing information used in gambling is not subject to forfeiture, by a severer penalty on the convicted gambler.

"No Pennsylvania court has held that a telephone company is under a duty to police its customers to determine whether their actions are at all times in conformity with law. That the company is prohibited from disclosing the contents of a message—and in some instances, under the Federal law, even the existence of a message—would seem to negative such a duty.

"The theory of the Pennsylvania law has been to place the enforcement of the law in the hands of the law enforcement agencies of the state.

"You should readily perceive the difference between a gas company furnishing natural gas for the operation of a still—by law illegal—and that of a telephone company furnishing telephone service under the Pennsylvania statutes expressly prohibiting the divulging of the contents of any message and which statutes, as the courts have held, do not make dissemination of horse-race news illegal.

"It seems to me that you should also point out that practically all the cases cited by you in which the courts (all of states other than Pennsylvania) have refused to enjoin the discontinuance of telephone service, had to do with so-called private wires (leased lines), and that now in Pennsylvania there are no such lines except those expressly covered by contract and filed with the public utility commission.

"Also, if you see fit to quote me, you should point out that the legislature apparently agreed with my statement as to the then law. For it subsequently passed the act, December 1, 1938,[8] providing for filing with the commission of contracts for private wires in an investigation by the commission, and, if disapproved by the commission, the service must be discontinued. Likewise, that this company willingly complied with that act

[7] (1937) 126 Pa Super Ct 533, 539.

[8] P. L. 111.

❦

¶ "If *a certificate holder doing business as a taxi concern were knowingly to devote any of its equipment to the transportation of robbers or other persons engaged in illegal acts, cancellation of its certificate . . . would be justified. Artificial persons have the same duties concerning the preservation of law and order as natural persons.*"

except in so far as enjoined from so doing by the court in a suit of various radio companies, wherein the court held the act unconstitutional as to them. This company, however, has raised no question of constitutionality.

"May I also point out that in Hamilton *v.* Western Union, referred to by you on page 589 of your proposed article, the United States district court entered a preliminary injunction restraining the telegraph company from discontinuing service. This is not mentioned by you.

"Also, in the case of H. F. Crowley *v.* Western Union Telegraph Company, in the common pleas court at Steubenville, Ohio, a temporary injunction was issued, restraining the Western Union from discontinuing service to Crowley.

"NEITHER do you refer to a decision of the Maryland commission, in which I am informed that commission ordered the Chesapeake & Potomac Telephone Company to furnish additional service to the *Howard Daily Sports Publications* in Baltimore, the telephone company there having refused additional service on the ground that the *Howard Daily Sports Publications* was a racing sheet.

"At the bottom of page 588 of your article, you say that in actions against subsidiaries of the American Telephone and Telegraph Company 'In no instance have the courts compelled the companies to furnish facilities.' However, you cite at the top of page 589 an Illinois decision which does exactly that, *i.e.*, restrains the Illinois Bell Telephone Company from discontinuing such service.

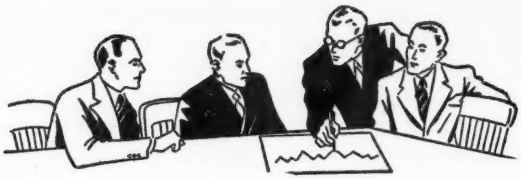
"My comments are not exhaustive, but are merely illustrative of some of the points in which I think you err. I do not agree with the conclusion and a number of other statements in your article to which I have not here specifically referred. I should not have ventured to comment at all except that you so requested and indicated that my failure to reply might be construed by you as a tacit approval of your article.

"I am sending you this with the idea of being helpful, and trust you will receive the comments in the spirit in which they are sent."

War in Earnest

"THIS story comes to us, suitably censored, direct from a member of the British Ministry of Information. Facing each other across the Maginot Line are a French village and a German village. The French village gets its electric current from the German village. Use of the present tense is intentional. At the outbreak of war, the current was shut off. The French 75's lobbed over a few shells and service was restored immediately. Several months later the Germans again essayed to go out of the public utility business; again they were shelled, and again they turned on the juice. Recently there was a third blackout in the French village. Before the French could get the field guns in action, however, a voice came bellowing through the loudspeaker normally devoted to German propaganda: 'The power plant has broken down. Please be patient for a few hours.'"

—EXCERPT *from The New Yorker.*



Wanted: A Coördinated Federal Power Rate Policy

Although the Federal government has been charged with being "the biggest holding company of them all" with respect to the operation of various public power projects, it is apparent that there is little coördination or uniformity in rate policy among the different projects.

By THOMAS L. NORTH

With legislation pending before Congress calling for a downward revision of Boulder dam's power rates, it seems appropriate to examine the lines along which the proposed amendments are indicated, and the circumstances and reasons for such a move at this time. Furthermore, fundamental changes in legislative provisions backing New Deal multiple-purpose projects contrast sharply with Boulder dam's strong self-liquidating features, framed as far back as 1928, the year marking the passage of the Boulder Canyon Project Act. Because the basis for setting power rates at Federal projects is not uniform, a potentially serious form of sectional economic discrimination seems possible, which eventually may cause the development of one region at the expense, to some extent at least, of another.

Consequently, so long as there is no prospect for the application of uniform principles, under a single administrative body, in setting equitable rates for all government power, it is open to question whether the proposed revisions are sufficiently liberal to adjust Boulder rates in compensation for the low power rate bases at TVA and Bonneville, made possible by generous nonpower allocations.

Boulder dam was built at a cost of about $125,000,000, *exclusive* of machinery for the power plant, which is kept in a separate account and amortized by the lessees over a 50-year period. Added to the cost of the dam is construction interest, amounting to less than $10,000,000. The Boulder Canyon Project Act allocates $25,000,000 to flood control, stipulating that it be repaid from 62½ per cent of the excess revenues, if any, taken in during the 50-year period. This is in the nature of a deferred payment to be borne by power, but calculations show that at present rates excess revenues received in the dam's 50-year amortization period will be ample to cover this item with a wide margin to spare. The remaining 37½ per cent of excess rev-

enues are to be divided between Arizona and Nevada, apparently in lieu of taxes. (See also p. 623.)

The act announces that the purposes of the dam are: "Flood control, navigation, river regulation, storing and delivering of water for reclamation and other beneficial uses, and for the generation of electrical energy as a means of making the project . . . a self-supporting and financially solvent undertaking." However, the dam and the reservoir are to be used *"first,* for river regulation, improvement of navigation, and flood control; *second,* for irrigation and domestic uses and satisfaction of present perfected rights, . . . ; and *third,* for power." Thus, power is to bear the brunt of repaying the dam with 4 per cent interest (aided by a small contribution from water storage), but is the most subordinate use. The Federal government assumed no financial risk in the undertaking, as the act provided that before construction was started, all firm power was to be contracted for by the allottees at rates sufficient to guarantee liquidation in at most fifty years.

WHETHER by accident or otherwise, the rate of 1.63 mills per kilowatt hour of firm power for falling water at Boulder dam works out to a cost of around 4 mills delivered at load centers in southern California—the approximate cost of generating steam power at tidewater in that region. The secondary energy falling-water rate is 0.5 mills. The act provides for periodic revisions of rates, starting in 1955 and every ten years thereafter "upward or downward as to price, as the Secretary of the Interior may find to be justified by competitive conditions at distribution points or competitive centers." This makes competitive conditions within the market area the basis for fixing rates. Since 1930, there has been no development suggesting that power in southern California may be produced more cheaply than at Boulder dam.

Principles of revision have been agreed upon among the conferees of the seven states of the Colorado river basin and the nine Boulder dam power allottees. It is proposed that the interest rate be reduced from 4 per cent to 3 per cent or less, to give the allottees the benefit of actual interest rates paid by the government. As it is now, the areas taking power from Boulder are penalized by paying to the government a higher interest rate, as embodied in power rates, than the cost of money to the government. Thus, it might be properly said that Boulder power rates are supporting totally unrelated governmental activities. Precedent for the 3 per cent rate is found in the Rural Electrification Act and the Housing Act of 1937.

Interest during construction would be charged at the actual cost of money to the government during the construction period, rather than 4 per cent.

This is a customary accounting practice. For example, in computing the total cost of Bonneville dam for the purpose of arriving at a base for power rates, the Federal Power Commission allowed interest at the rate of 1.54271 per cent, the weighted average rate of interest paid on all money borrowed by the United States during the 50-month construction period, including both long-term and short-term financing.

REPAYMENT of the $25,000,000 allocated to flood control would be deferred until after amortization of other advances, and would be repaid without interest. Precedent for repayment of flood control without interest is found in the Reclamation Law. In fact, in the TVA, Bonneville, and Ft. Peck projects, flood control is *nonreimbursable* from power.

It is contemplated that $300,000 annually will go to each of the states of Nevada and Arizona, to compensate for the existing proviso that those states are to share in the "excess" revenues after amortization of the dam. In addition, a newly created Colorado River Development Fund would receive $500,000 annually for forty-eight years, the proceeds to go for further development work in the seven basin states.

Rates for falling water at Boulder dam would be reduced from 1.63 mills per kilowatt hour to approximately 1.1 mills per kilowatt hour for firm energy, and from 0.5 mills to about 0.3 mills per kilowatt hour for secondary energy. Rates would be subject to revision upward or downward in 1955 and thereafter at 10-year intervals on an amortization basis, to assure that the dam would be approximately liquidated in fifty years, no more and no less. This is an important consideration in view of the fact that the water flow of the Colorado in the last several years has been very substantially below the mean flow calculations upon which present rates are based.

Sponsors of the proposed amendments feel that by placing rate revisions on an amortization basis rather than a basis of market competition, the review and alteration of rates will be a matter of fact and mathematics, rather than of debatable controversy, while, at the same time, the financial solvency of the dam will be assured.

EVEN the proposed revisions to the original Boulder Canyon Act appear to be conservative as compared with the basic principles evidenced by New Deal multiple-purpose projects. These differences may be summarized:

TABLE I

BONNEVILLE DAM: FEDERAL POWER COMMISSION'S COMPUTATION OF POWER'S SHARE OF TOTAL COSTS

Direct investment in power facilities (when all ten generators are ultimately installed)	$29,448,000
Direct investment in navigation facilities	5,517,600
Joint investment, navigation and power (including fishways)	39,179,000
Total ultimate investment in Bonneville	$74,144,600
Basis of computing power's share:	
Direct investment in power	$29,448,000
Joint investment, multiplied by 32½ per cent	12,733,000
Power's total share (57 per cent of total ultimate investment)	$42,181,000

(Computations include construction interest at 1.54271 per cent from November 1, 1933, to December 1, 1937.)

Source: Federal Power Commission, Release No. 380, dated February 9, 1938.

1. In recent projects, the government takes all the risks. It builds its dams first and worries about outlets for power later.

2. Laws authorizing New Deal projects expressly require that in the sale of power, preference be given to public bodies and coöperatives, ahead of private companies. Administration of these works gives further push to the public ownership idea, inasmuch as the administrators apparently have strong personal convictions that public ownership should be encouraged. At Boulder dam, of course, public and private bodies alike are purchasers, on equal footing, enabling customers of both types of ownership to benefit from the power made available.

3. The TVA and Bonneville administrators as a rule fix maximum resale rates for power purchased, thereby taking over an important regulatory function. No such factor exists in the Boulder dam situation, which, in contrast, is governed purely by written law, to be administered by the Secretary of the Interior, who is left no important degree of discretion.

4. Rates are quoted to purchasers at the end of transmission networks, whereas Boulder rates are falling-water rates, excluding even the machinery necessary to produce the power.

5. New Deal multiple-purpose dams now in service (TVA and Bonneville) make liberal allocations for nonpower uses, thereby excluding from power's burden an important part of the capital outlay. This makes for cheaper rates than are possible at Boulder.

THE significance of the last factor is great, for at Boulder dam, under existing law, power must repay the entire capital outlay, even including flood control. Nevertheless, the nonpower benefits afforded by this structure are great. They prevent disastrous floods, permit reclamation projects, and regulate the river, making possible a new water supply for southern California. The dam to a large degree desilts a notoriously muddy stream.

The Federal Power Commission computed power's share of the joint investment in Bonneville at 32½ per cent, which, when added to the direct capital outlays for power, brought the total base to be borne by energy rates to 57 per cent of the entire investment. These computations are detailed in Table I.

Again, the TVA board has developed a formula for allocation, as required by § 14 of the TVA Act. In the authority's letter to the President of the United States, dated September 27, 1939, the TVA multiple-use facilities were allocated: to navigation, 36 per cent; to flood control, 24 per cent; to power, 40 per cent. Application of these ratios to the total TVA investment as of June 30, 1939, is shown in Table II. Adding the allocations for joint uses to the direct charges assignable to each use, power is charged with 52.6 per cent; flood control, with 17.7 per cent; and navigation, with 29.7 per cent of the TVA's total capital account.

The contrast with Boulder's accounting set-up is made even more striking when it is recalled that power purchasers at Boulder pay for falling water, and compensate the government for the amortization of power machinery through a separate account. Moreover, Boulder purchasers take their power at the dam, not at the end of elaborate transmission lines as maintained by TVA and Bonneville. Under the Boulder arrangement as it now stands, power pays for its own transmission, its own powerhouse machinery, and for the entire cost of the dam,

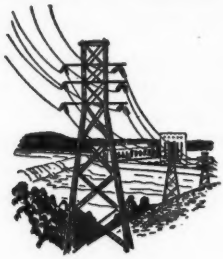


TABLE II

TVA PROJECT: BREAKDOWN OF CAPITAL ACCOUNT AS OF JUNE 30, 1939, UNDER ALLOCATIONS MADE BY TVA BOARD

Multiple-use facilities totaled $77,679,218.

Navigation		
Direct charges to navigation	$ 9,698,910	
Navigation's share of multi-use facilities (36 per cent of $77,679,218)	27,964,518	
Total charges to navigation (29.7 per cent of grand total)		$37,663,428
Flood Control		
Direct charges to flood control	$ 3,621,000	
Flood control's share of multi-use facilities (24 per cent of $77,679,218)	18,643,012	
Total charges to flood control (17.7 per cent of grand total)		22,264,012
Power		
Direct charges to power	$36,203,461	
Power's share of multi-use facilities (40 per cent of $77,679,218)	31,071,687	
Total charges to power (52.6 per cent of grand total)		67,275,148
Grand Total		$127,202,588

Source: TVA Annual Report, 1939.

with construction interest. The amendment would permit the $25,000,000 for flood control to be deducted from the present rate base — less than 20 per cent of the total cost. If power machinery and transmission lines were added to a degree sufficient to make the comparison with TVA and Bonneville a true one, it is probable that the amended act would burden power rates with at least 90 per cent of the dam's amortization.

RATE comparisons of the three major multiple-purpose projects indicate that the Bonneville and TVA areas have a decided advantage in bidding for industries requiring cheap power, with the Bonneville area having much the lowest rates of the three regions.

To Boulder's 1.63-mill rate for falling water must be added about one-half mill for interest and amortization of powerhouse machinery, from one-

third to one-half mill for operation and maintenance of the powerhouse, and from 1 to 1½ mills for transmission costs and line losses, bringing the total cost of delivered firm power to 3½ to 4 mills. Secondary energy is about one mill cheaper. The proposed amendments to the Boulder Act would reduce the cost of firm power by about one-half mill, and secondary energy, about 0.2 mills. Such small reductions are not particularly important in general usage, but are vitally important in types of industrial uses where power costs are large in relation to total production costs.

Average rates received by the TVA in the twelve months to June 30, 1939, were as follows:

Type of Service	*Mills per Kw. Hr.*
Municipalities	4.85
Coöperatives	5.95
Industrial Customers	2.78
Private Utilities	2.92
Temporary Rural Service	12.90
Interdepartmental	2.61
Average	3.36

Even TVA rates are high compared to those available at Bonneville. The flat $17.50 per kilowatt-year rate (after transmission) affords an industry having a 100 per cent load factor a 2-mill rate for firm power. For this reason, Aluminum Company of America is now locating a plant near Vancouver, Wash., to take advantage of this rate, inasmuch as the $17.50 rate is even more attractive than the rate available to that company's plant in the TVA region. Aluminum refining requires firm power at extremely low rates, but has virtually a 100 per cent load factor.

Table III affords a comparison of industrial power rates available at three cheap power areas in the United States. It will be seen that even the revised Boulder rates would give the power allottees less favorable rates than those directly available to industries having high load factors in TVA and Bonneville areas. Boulder allottees must resell their power to industries located within their territories.

PRIME motivating forces behind the move to revise Boulder rates are the Metropolitan Water District and the Los Angeles Department of Water and Power. The water district is committed to use 36 per cent of the firm energy developed at Boulder, if no other purchasers can be found. Ultimately, the district may need this vast amount of energy for pumping water through its aqueduct, but its needs will be relatively small for many years. Consequently, a rate reduction would serve to lessen the district's financial obligations.

The Los Angeles Department of Water and Power is interested in the reduction for quite another reason. For over twenty years, it has made available attractive industrial power rates as a lure for industries to locate in the vicinity of Los Angeles. Introduction of Boulder dam power in 1936 permitted a substantial rate reduction. Now, however, the department finds that in bidding for further local development, it runs up against competition from low rates in the TVA area and particularly from its neighbor competitor, the Pacific Northwest.

The department of water and power already has a rock bottom optional rate applicable to electrochemical and electrometallurgical power service. This service, which is subject to interruption, offers a 2.25-mill energy

charge, *after* demand charges for use of power in "on-peak" and "daily" periods. A user (as yet there are no customers under this schedule) having a high load factor, as this type of industry surely would, could not come out under this rate for much less than 4 mills per kilowatt hour, a high rate compared with Bonneville. A reduction of one-half mill would be made possible under the proposed revision of Boulder rates. This would be an important step in improving southern California's competitive position.

WHILE the Boulder dam region can hardly hope to offer rates low enough to attract the aluminum industry, it may be able to develop its own important mineral and chemical resources, if power rates are attractive enough. The area within reach of Boulder dam power is one of the richest potential mineral regions in the world. Development of resources would involve electrolytic treatment in most instances, however, for which very low power rates must be available.

Good possibilities for electrometallurgical industries are found in this region; most promising fields for exploitation lie in the electrolysis of zinc, manganese, magnesium, and tungsten. Borates, gypsum, and limestone are already the bases of important regional industries. Strontium has possibilities, while chromium is found in California areas well removed from Boulder dam, but which nevertheless benefit through interconnections with Boulder allottees. Large high-grade deposits of iron ore lie within an easy radius of the dam: it might be feasible to work such deposits with electricity, as in Scandinavia, using but a small amount of coke (a scarce regional item).

It is interesting to note that a plant in Los Angeles now imports Livingstonite ore from southern Mexico, and reduces it to obtain quicksilver and antimony. Ores are also imported from remote regions of Nevada and California.

TABLE III

COMPARISON OF INDUSTRIAL POWER RATES
(AT 90 PER CENT LOAD FACTOR)

	Range-cents per Kw. Hr.
Niagara Falls Power Co.	
(26 industrial customers at high load factors)	1.22-0.13 (Average 0.31)
TVA	
(Schedule B-3, for 25,000-kw. demand and 16,400,000 kw. hr. per month)	0.405 (Average 0.257)
Bonneville	
Prime power (at site)	0.18
Prime power (on transmission lines)	0.22
Secondary power (at site)	0.12
Secondary power (on transmission lines)	0.15
Half prime, half secondary power (at site)	0.15
Half prime, half secondary power (on transmission lines)	0.18

Source: "Electrometallurgy and Power in Pacific Mineral Development," by Ivan Bloch, *Mining World*, December, 1939.

Cheap Bonneville power is giving rise to consideration of developing metallic reserves in Oregon and Washington. Chromium, magnesium, and manganese have particularly promising prospects. Arrangements have been completed to construct electrical blast furnaces at Vancouver, Wash., to produce pig iron from nearby Oregon iron ore deposits. This will be the first pig iron producing plant on the Pacific coast, and will be worked by electrolytical reduction methods through use of Bonneville power. As a matter of fact, it took extremely cheap power, combined with adjacent iron ore and limestone reserves, to bring about the first electric blast furnace in this country.

PROPOSED lower rates at Boulder, as passed on to regional industries generally, would not be particularly important in determining the future trend of industrial location as between the Boulder area and other regions. Power rates are usually outweighed by such factors as closeness to markets, location of raw materials, transportation advantages, and labor supply. Nevertheless, the long-range importance of regional competition for industry through power rates can hardly be overstressed.

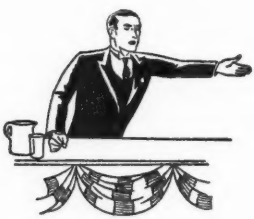
In bidding for regional development of mineral wealth, an area is faced with the fact that power is an outstanding element in determining competitive costs. Thus, if substantially cheaper power is available in the Pacific Northwest, the mineral resources of the Pacific Southwest may have to remain undeveloped for many years, if production costs are not competitive. It may be significant that the chief sponsors of the electrolytic pig iron venture in the Bonneville area are mostly Los Angeles business men. If power were more nearly equalized as between the two areas, it would seem more logical to develop an electrolytical pig iron plant in southern California (which also has high-grade ore reserves), close to the largest steel marketing area on the Pacific coast. A similar push may be given to the development of certain other Pacific Northwest resources in competition with possible development of corresponding potential resources in the vicinity of Boulder dam.

Even the proposed downward revision of Boulder rates, then, will not effectively offset the competitive power advantages enjoyed in other project areas. In comparison with the generous allocations to nonpower uses made at TVA and Bonneville, it would appear that treatment of power consumers in the Boulder area will remain comparatively severe even after the projected revisions. Hence, while there is considerable basis for concluding that the Boulder amendment bill is an individually designed, sound business measure, it does not touch at all upon adjustments that now seem justified because of the drastic changes recently made effective in other parts of the country, resulting from a new philosophy in government.

IN summary, it may be seen that the haphazard administration of public power can give rise to a very real form of discrimination as between sections of the country. It seems necessary to determine to what extent the general taxing power is being used to subsidize and develop any one section of the

country more generously than the others. As it is now, each power area is administered by a different body, under contrasting sets of principles.

The public interest would appear to demand that uniform principles be set up to govern administration of all public works alike, so that power rates in every case will reflect fair and similar burdens in retiring the government's capital investments. Administration of public power by a single body has much to recommend it. Under the present confused arrangement, it is impossible for each administrative body to maintain the basic nation-wide perspective necessary for impartial administration of the government's sectional investments, which in every instance were built for the benefit of all the people.



Let Not the Right Hand Know—

The following excerpt is from the examination of Commissioner John C. Page, U. S. Bureau of Reclamation, February 5, 1940, before a subcommittee of the House of Representatives:

MR. JOHNSON (D.) of West Virginia. Mr. Page, I understood you to say you did not know anything about TVA; is that correct?

MR. PAGE. Well, I have read about them in the papers.

MR. JOHNSON of West Virginia. Now, you are both playing the same game and is it possible that you have two set-ups here in the government playing the same game and neither one of them knows the tricks of the other's game?

MR. PAGE. Well, I think that is more or less true.

MR. JOHNSON of West Virginia. And you mean to say you do not confer with TVA on any of these projects of yours, which are similar to TVA, and the government is financing them both?

MR. PAGE. No, sir. We have no contact with them, except we meet in meetings, and things like that.

MR. JOHNSON of West Virginia. Are not you friendly?

MR. PAGE. Oh, yes, sir; but there are many thousands of miles between their enterprises and ours.

MR. JOHNSON of West Virginia. I know; but you are in the same game?

MR. PAGE. Yes.

MR. JOHNSON of West Virginia. And, therefore, you could learn a little, one from the other, if you collaborated?

MR. PAGE. I will say this, as far as the engineering is concerned, that we are fairly close to them. Our chief designing engineer is a consultant of TVA.

MR. JOHNSON of West Virginia. But you have very little tie-up other than that?

MR. PAGE. We have that.

MR. JOHNSON of West Virginia. Have not you anything else in common?

MR. PAGE. Nothing officially. We visit with them.

MR. JOHNSON of West Virginia. I do not understand why the government is in this electrical game and having two distinct set-ups here, and one does not know anything about the other. That is what I do not understand.

MR. PAGE. I do not say we do not know anything about them. We read of them, and so on; but, as a matter of policy, of course the TVA is a corporation which runs its own affairs and we have been in business so long that we have built up more or less our own methods.

MR. JOHNSON of West Virginia. Have not they been in business about as long as you have?

MR. PAGE. Oh, no. We started in 1902.

Wire and Wireless Communication

A TELEPHONE executive told the monopoly committee on April 17th that the American Telephone and Telegraph Company retained 60,000 unneeded employees "at the bottom of the depression." W. H. Harrison, vice president of the Bell system, said retention of these extra employees explained why the "increase in number of employees has not kept pace with the increase in telephones, usage, and revenues" in recent years.

Miss Rose Sullivan, an organizer for the American Federation of Labor, and a former telephone operator, said the system of automatic switching now used on about half the 21,000,000 telephones in the country had caused 150,000 women operators to lose their jobs in recent years. She said that "nobody likes the dial—nobody wants it." She added that it gave "inferior service at very greatly higher prices."

Harrison said use of the automatic dial telephone had eliminated thousands of jobs, but that "broadly speaking employees affected by improvements in apparatus or operating methods have not been laid off, but have been retained and reassigned." Without dial telephones, Harrison said, the telephone system in modern metropolitan areas would be swamped. And even with dial phones, he continued, a large staff of operators is needed for handling changes, information services, and toll and long-distance calls.

PRIOR to 1929, the witness testified, the Bell system made heavy investments in new equipment and construction to prepare for the dial instruments and for a steady expansion of services. Plant investment rose from $1,200,000,000 in 1920 to $3,700,000,000 at the end of 1929, he said. Employment rose to 364,000 persons in 1929, and Harrison said that was "clearly an abnormal situation and not an appropriate yardstick with which to appraise subsequent development." The system employs fewer than 270,000 persons now.

With the depression and a decrease in the number of telephones in use, he added, "thousands of employees were retained by spreading the available work and other thousands by introducing productive 'made work.'" Despite these efforts, he said, "work requirements dropped steadily. There was simply not enough work to go around. Had the system released all employees not actually needed there would have been 60,000 fewer employees at the bottom of the depression."

Harrison said the number of employees has increased over the last few years and "it is expected that this upward trend will continue."

Paul E. Griffith, president of the National Federation of Telephone Workers, an independent union which purports to represent 110,000 dues-paying members, both in the Bell system and independents, appeared before the TNEC on April 18th and urged spreading of employment through shorter hours for telephone workers. Mr. Griffith pointed out that while the telephone industry as

a whole operates more telephones today than it did in 1929, it is supplying such additional service with a personnel decrease by more than 100,000 employees since 1929.

THE head of the National Federation, which is an intraindustrial union without affiliation to either the CIO or AFL but organized similar to the railroad brotherhoods, emphasized that it was not opposed to technological progress as such, including the introduction of dial phones. But on the record of employment Mr. Griffith felt that the benefits of such technological advancements were not being passed on to the workers in fair proportion. He rejected the argument which had been made the day before by the representative of the International Brotherhood of Electrical Workers, Miss Rose Sullivan, that telephone dial service was *per se* almost antisocial and antilabor, and even hinted that Miss Sullivan's organization represented at most only a comparative handful of telephone operators ("less than 3,000 on the high side").

Mr. Griffith also took the interesting position, in response to examination by the committee's counsel, Dewey Anderson, that the interests of the workers in the telephone industry ought to be given more consideration before indiscriminate rate cutting was ordered by public authorities. "The public is not clamoring for any great rate reduction for telephone service," said Mr. Griffith, but on the other hand such agitation "usually comes from political bodies." He added that the telephone workers had, of course, no objection to reasonable telephone rate reductions, provided the wage levels and interests of the workers were taken into account.

He referred specifically to the recent long-distance telephone rate reduction as being "a matter of great concern" to telephone employees because of the possible adverse effects on wages and jobs. Mr. Griffith also agreed with the chairman of the committee, Senator O'Mahoney of Wyoming, that the burden of taxes on the telephone industry should be reduced so that telephone companies would have more opportunity to increase employment and raise working standards.

In contrast with the testimony of Miss Sullivan, Mr. Griffith complimented the technological advance which the telephone industry has made during recent years as being in the general public interest, but warned that where such progress results in considerable unemployment, even of a temporary nature, "the telephone industry must assume the public responsibility of taking care of its employees in the matter of wages and jobs." He complimented also the loyalty of telephone workers.

* * * *

A TELEPHONE company regulation that each instrument be installed for the exclusive use of the subscriber, members of his family, and his employees was recently held to be "unreasonable" by the Arkansas Supreme Court. The opinion was expressed in affirming the Washington Circuit Court's findings that the Southwestern Bell Telephone Company discriminated against two Fayetteville business houses in refusing them service at the same rate paid by similar establishments in Little Rock.

The court ruled that the telephone company must pay $510 to Mrs. Carrie Lee, operator of the Campus cafeteria at the University of Arkansas, and $850 to S. B. Hanna, owner of the Waffle House cafe, in penalties under a 1914 statute for failure to provide service. Both were refused service at the $3.50 monthly business phone rate unless they would place the instruments in places not accessible to University of Arkansas students and others. A $10.50 rate was specified for this service with the telephone placed on a counter. Citing testimony that other establishments were served for $3.50 and had phones which students used, the court said the company must abide by one of its tariff regulations, which provides:

> The telephone company has the right to refuse to install customer service or to permit such service to remain on premises of a public or semipublic character when the in-

strument is so located that the public in general may make use of the service.

The court said the company could not ignore this rule as it affected some business houses and require that it be observed by others.

REFERRING to the "unreasonable" rule limiting telephones to the use of the subscriber, his family, and servants, the court said:

> Telephones are not like cash registers or typewriters in a place of business, used only by those engaged there. The telephone is presumed to be an open channel of communication every minute of the day and hundreds of calls would not consume or use up any part of it, nor would this great number of calls tend to impair in the least the service.
>
> We think it must appear, therefore, that the agents of the telephone company who sought so assiduously to avoid rendering a free service to the university students are denying to a large number of subscribers the right to receive calls no doubt contemplated. No university student ever put in a call without a number paid for by another subscriber whose telephone was perhaps installed for the very purpose of receiving such communication.

Justices E. L. McHaney and Frank Smith dissented.

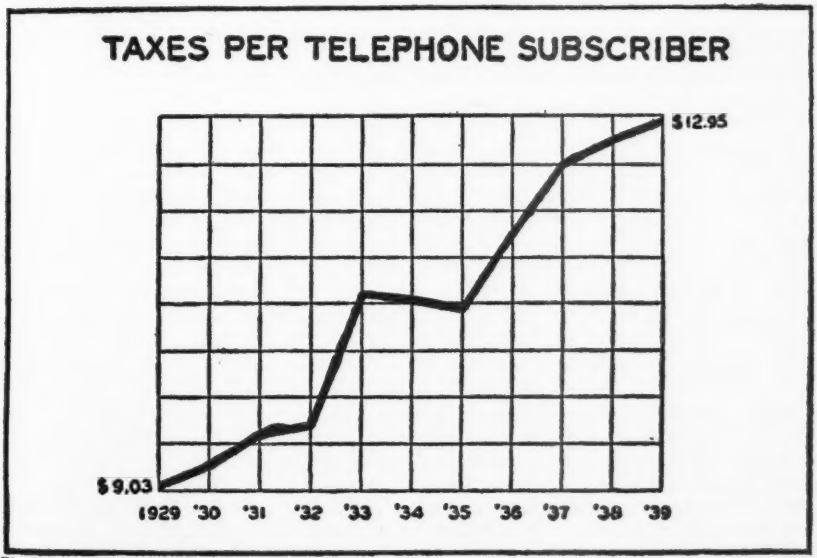
E. N. McCall, district manager of the telephone company, declined to forecast the effect of the decision on present rates. He said he would confer first with company lawyers. He stated:

> However, I do not believe the company will be affected materially except in isolated cases. Telephone service is somewhat like any other utility service. The more you use the more you are required to pay. It is obvious that a subscriber who makes 100 calls a day is getting more service than one making the average number of calls of 10 or 12. Each call is manufactured separately. Therefore we can't wholesale calls, but must retail them. It is necessary that the company adopt some type of measured service in cases of high public usage.

* * * *

IN the first Pennsylvania case of its kind, Abraham Plotnick, of Philadelphia, on April 19th asked the state public utility commission to see that he gets race track telephone service. He petitioned the commission in Harrisburg to compel the Bell Telephone Company of Pennsylvania to lease him wires so he can publish race track news. The company has turned him down several times. (See p. 586.)

The commission set a hearing for May 2nd in Philadelphia.



The Evening (Baltimore, Md.) Sun

Plotnick was refused the service, Vice President John J. T. Harris of the telephone company said, because the company "will not accept applications for telephone and teletype service knowing the applicant's business is to publish scratch sheets and disseminate horse-race information." According to Commissioner Richard J. Beamish, Harris said the firm's policy was based on:

1. An affidavit signed by Samuel Klaus, special assistant to U. S. Attorney General Robert Jackson to the effect that "new scratch sheets are merely a blind and a sham that are not even intended in any substantial way to compete with existing scratch sheets, but are only intended as a device to cover up the perpetuation and continuance of the wire service."

2. Newspaper articles that it was illegal in Pennsylvania to grant such service.

* * * *

CAPITAL circles were caught by surprise on April 25th by the sudden announcement of the resignation from the FCC of its general counsel, William J. Dempsey, and assistant general counsel, William C. Koplovitz. They said they resigned to engage in private law practice jointly in Washington.

Chairman James L. Fly, absent from the city at that time, sent a telegram saying the commission was "sorry to lose such valuable services." Dempsey and Koplovitz, who had been previously associated as legal aides in the FPC, were credited by Fly with an "unbroken record of favorable decisions for the commission in seven Supreme Court cases and 29 court of appeal cases."

Rumors that commission-counsel friction over recent issues, including television, caused the break were denied.

* * * *

SHARP protest against the proposed New York city tax of 5 cents a month on every telephone in the city was expressed by the Citizens Budget Commission on the eve of a public hearing before the council finance committee at City Hall on April 19th.

Henry J. Amy, executive director of the commission, informed Councilman Joseph E. Kinsley, committee chairman, that his organization opposed the tax. Sponsored by Councilmen Harry W. Laidler and Salvatore Ninfo of the Labor party, the measure is designed to raise $900,000 a year to subsidize about $40,000,000 of new low-cost housing under the State Housing Law. In his letter to Chairman Kinsley, Mr. Amy said:

> The city at present is levying an occupancy tax for the same purpose, estimated to yield $500,000 in the fiscal year 1940-41. The executive budget for 1941 provides an estimate of general fund revenues available for reduction of taxation next year including $500,000 revenue from the occupancy tax. The budget makes it clear, therefore, that the occupancy tax is expected to yield $425,000 more than the city plans to spend on housing subsidies in the coming fiscal year. Under the circumstances it appears that there can be no justification for the imposition of an additional tax to provide funds for housing subsidies while the existing tax is yielding more revenue than required for the purpose.

Councilmen Laidler and Ninfo announced that if their bill was passed they would ask funds for new housing in substandard areas of the Brownsville section of Brooklyn, and in the vicinity of St. Ann's avenue and East 148th street in the Bronx.

* * * *

TELEPHONE rates in seven Oklahoma cities will be raised, as the result of a Federal court order on April 19th. Reduction of rates in 33 other cities was not allowed under the order. The rate raise, which will amount to about 25 cents monthly for each phone, will be effective in Ada, Clinton, Hartshorne, Okemah, Stillwater, Weatherford, and Walters.

The 3-judge Federal court, consisting of Sam G. Bratton of the circuit court of appeals, Edgar S. Vaught and Alfred P. Murrah, district judges, did not deny the company the right to increase rates, after the corporation commission's attorneys failed to object.

The statewide rate fight was brought to Federal court April 9th, when the state supreme court denied a stay.

Financial News and Comment

By OWEN ELY

Status of the "Show Cause" Orders

THE recent status of the "show cause" orders against the nine holding company systems was as follows:

The *Engineers Public Service* case is furthest advanced; a hearing was to be held April 26th but has now been deferred to May 27th. The system's problems are discussed in more detail on page 608.

Electric Bond and Share's request for a delay, pending the commission's decision as to whether American Gas and Electric is an EB&S subsidiary, has also been denied. While Electric Bond and Share was required to file its plan April 27th, the door was left open for "reasonable postponement for good cause shown." In denying any lengthy delay, the commission pointed out that "only a fraction of its properties can conceivably have any relation to the American Gas properties." The commission mentioned as other system properties those in Washington, Texas, Louisiana, Wisconsin, and various South American and Asiatic countries. Inclusion of foreign properties seems superfluous, since all subsidiaries of American & Foreign Power should remain exempt under the act. It also seems to be making things unnecessarily difficult for Electric Bond to be deprived of the privilege of presenting one complete plan, instead of one omitting the American Gas properties. There does not appear to be any particular reason why the SEC should not give a prompt decision as to whether American Gas is a subsidiary. (Technically it is; Electric Bond owns about 19 per cent of the common stock.) American Gas and Electric has maintained a separate management and has not been closely affiliated with EB&S.

UNITED *Light & Power,* which is reported actively at work on a recapitalization program (which, however, may be distinct from the integration plan), obtained a postponement of the date for its answer to May 2nd and the date of hearings to May 27th. According to a report in the *New York Sun,* the recapitalization plan will replace 600,000 shares of $6 preferred, 2,421,192 shares of common A, and 1,055,576 shares of common B, with a single issue of new common stock; the preferred stock might, it was said, receive about five shares of new common for each share and accrued dividends, while the present common would receive about one-tenth of a share for each share held. It was also reported that part of the outstanding debentures might be retired.

United Gas Improvement replied to its "show cause" order with a statement that its system already meets the requirement of the act within constitutional limitations, that the order was defective in procedure, and that some provisions of the act are unconstitutional. The company held that the "notice and opportunity for hearing" was clearly intended to be made available to the company *after* and not *before* it had been advised by the commission as to the latter's "determinations" regarding UGI integration. It also held that the commission had not yet passed on the applications for exemptions (as UGI subsidiaries) filed by Public Service of New Jersey and several other companies. Pointing out that the business dated back fifty-eight years, the company mentioned that its properties had been acquired be-

fore the law was passed. It stated that "the well-recognized financial integrity of UGI and the related operating companies, and eminent ability of UGI to go forward in the regional area in which its investments are concentrated, in coöperation with localized management and state and Federal regulatory bodies within their respective jurisdictions, stand out as unimpeachable evidence of its sound position in the utility industry."

It was also stated that the company had followed a policy of building up its regional area and disposing of scattered properties; and that it now proposes to sell for cash (or on an exchange basis) the remaining isolated interests in Arizona, Tennessee, and New Hampshire, when favorable opportunities arise.

CITIES *Service Power & Light* was granted an extension to May 13th for filing its answer.

Standard Gas and Electric indicated its decision to coöperate with the SEC in breaking up its far-flung system. Properties to be immediately disposed of, through distribution of equities to parent company bondholders, are San Diego Consolidated Electric & Gas, California-Oregon Power, and Mountain States Power. The company, now headed by former FDIC Chairman Crowley, obtained a liberal time extension to June 15th for filing its plan. Standard Power & Light, inactive parent company of Standard Gas and Electric, has indicated that the latter will prepare the system plan, since it has no facilities itself for doing so. The SEC has authorized the city of Pittsburgh to intervene in the Standard Gas proceedings, the city claiming that it is "receiving poorer public utility service and paying higher rates than would obtain if their public utility requirements were supplied by a single integrated public utility system within the meaning of the act."

North American Company and *Commonwealth & Southern* obtained short time extensions—the former to May 18th, and the latter to April 30th. North American Company, it is rumored, may come forward with a plan for partial compliance, retaining Cleveland Electric Illuminating and the Wisconsin properties, while "tagging for sale" the properties in Illinois, Iowa, Missouri, Kansas, and Nebraska.

Middle West Corporation obtained postponement of its "deadline" to May 9th, and hearings have been set for June 28th.

Engineers Public Service Company

ENGINEERS Public Service Company, one of the first holding companies to be served with a "show cause" order by the SEC, was also first to "throw down the gauntlet" to the SEC on constitutionality of § 11. (See last issue of the FORTNIGHTLY, p. 552.) The company's request for a 90-day postponement of the hearing date fixed by the SEC was refused, but the commission later granted a month's continuance to May 27th.

System subsidiaries, while relatively few in number and without corporate complications, are about as far apart as possible, being located on the Atlantic seaboard, in the Pacific Northwest, in the Middle West, and in the South. The company would be glad to divorce its northwestern property—Puget Sound Power & Light—and since January 1, 1939, has excluded that company from its consolidated system statements. Puget Sound has not been very prosperous in recent years, failing to earn anything for the common stock held by the parent company, and its exclusion has improved the appearance of the consolidated earnings statement.

Due to the competitive power conditions which will prevail in the Northwest on completion of Bonneville and Grand Coulee, the outlook for recovery in Puget Sound earnings does not seem especially hopeful. The Consumers Non-Profit Public Power Corporation, which has been organized ostensibly by public utility district commissioners to acquire

the Puget Sound property, has recently made public its "plan and principles" and hopes to present a definite cash offer to Engineers Public Service in the near future. Plans to sell a bond issue for the necessary cash have been developed in New York city, it is said, by James I. Metcalf, utility engineer and economist now employed as manager, and Guy C. Myers, fiscal agent for the company.

President Frank McLaughlin of Puget Sound is reported, however, to have referred to the coöperative program as "a blitzkrieg on paper." He added:

> From time to time, ever since I have been here, there have been outbursts of wishful thinking and much loose conversation as to the acquisition of the company's property. The position of the company remains the same: There has to be a plan, backed up with evidence of ability to perform—real cash on the barrelhead—with a withdrawal of condemnation suits.

THE estimated liquidating value of the assets of Engineers Public Service, and the corresponding 1939 income and equities, may be summarized as follows (all figures in millions of dollars):

Included States		*Est. Liquidating Value*	*Est. 1939 Inc. Recd. by EPS*	*EPS Equity in Net Profits*
Texas, La., N. M.	El Paso Electric (Del.)*	$1.8[1]	..	$.2
	El Paso Natural Gas	1.8[2]	$.1	.2
	Gulf States Utilities	24.5[3]	1.1	2.1
Va., N. C.	Virginia Elec. & Power	29.3[4]	2.2	2.7
Georgia	Savannah Electric	1.6[5]	.1	.1
Colo., Neb., S. D., Wyo.	Western Pub. Service	2.3[6]	.2	.2
Washington	Puget Sound P. & L.	(?)	..	D .6†
	Cash (less current liab.)	3.5	..	..
	Total	$64.8	$3.7	$6.1

Engineers Public Service (parent company) has no funded debt. The above estimated liquidating value is sufficient to provide about 152 per cent coverage for the $42,301,500 par value of preferred stock, and after deducting the preferred there would remain approximately $11.80 per share for the common stock. The stocks are currently quoted about as follows:

$5 Preferred	79
$5.50 Preferred	83
$6 Preferred	92
Common	9½

It is evident from the above table that while Engineers Public Service covers at least five areas (not including the unimportant Key West, Fla., properties), only two of these are important from an earnings point of view. In fact, it would seem hardly worth while for the company to wage a battle through the courts against § 11 if the object is merely to retain control of Western Public Service, Mesilla Valley Electric (a small isolated subsidiary of El Paso Electric), and the Western Public Service properties. Puget Sound Power and Light is to be sold whenever a favorable offer is re-

* Controls El Paso Electric Company of Texas, the operating company.
† Not included in total, account new system policy.
[1] 3,377 shares of preferred and 56,494 common; latter valued at 8 times 1939 earnings.
[2] 51,357 shares owned, at current market around 36.
[3] 280,000 shares (100 per cent) owned, valued at 12 times 1939 earnings.
[4] 2,778,710 shares (100 per cent) owned, valued at 11 times 1939 earnings.
[5] 5,500 shares 8 per cent preferred and 133,106 shares common, latter valued at 7 times 1939 earnings.
[6] 31,341 shares $1.50 preferred, 10,000 $6 preferred, $1,032,000 5½ per cent bonds, and 500,000 shares (100 per cent) common. Values of the bonds taken at market (101), preferred stocks at approximate or estimated market, and common at 7 times 1939 earnings.

Calendar Year	Consolidated System Basis Pfd.	Consolidated System Basis Common	Parent Company Basis Pfd.	Parent Company Basis Common
1939	$12.43	$1.55	$8.17	.61
1938	9.01	.81	6.90	.34
1937	8.77	.75	6.38	.22
1936	6.85	.33	5.90	.11
1935	3.73	D .38	2.87	D .57
1934	2.59	D .63	2.57	D .64
1933	3.20	D .50	4.98	D .10
1932	9.74	.98	8.83	.77
1931	14.98	2.16	12.33	1.56
1930	16.22	2.62	15.96	2.56
1929	17.65	2.38	14.98	1.86

D—Deficit.

ceived. But since the company apparently feels doubtful that the SEC is willing to permit it to retain two well-integrated systems—Texas-Louisiana and Virginia-North Carolina—it may obviously be worth while to question the legality of the act.

For the twelve months ended February 29, 1940, Engineers' consolidated system earnings amounted to $1.64 on the common stock, compared to $1.17 in the corresponding previous year. The earnings record by calendar years since 1929 is shown above (on both a consolidated and parent company basis).

System capitalization is as follows, as of December 31, 1939:

Subsidiary Companies	
Funded debt	$146,948,000
Bank loans (long-term)	6,655,350
Preferred stock	69,522,543
Engineers Public Service	
Funded debt	None
Preferred stocks	431,000 shares
Common stock	1,909,968 shares

Considering the sound corporate and financial background and set-up, it is an interesting question whether the SEC will be willing to use Engineers Public Service as a test case in the courts for § 11.

SEC Favors Single Integrated System

EVIDENCE seems to be accumulating that the SEC will try to enforce the narrowest possible interpretation of § 11; namely, that no holding company system can retain more than one group of interconnected properties, and that such properties must be in states which are all adjacent to each other (not separated by any intervening states). It remains possible, however, that a holding company by temporarily or permanently relinquishing its voting rights (through trusteeing stocks, or some other method) might be allowed to defer indefinitely the sale of nonintegrated properties. To what extent the utilities may wish to avail themselves of such a means of escape remains indeterminate, although thus far two (Cities Service Company and International Paper) have used this device.

SEC Chairman Frank, writing in the *Electrical World,* has suggested that holding companies could retain nonintegrated subsidiaries "by enfranchisement of the bondholders and preferred stockholders of the operating companies; by voiding a portion of the voting rights on the securities held by the holding company, or by any other method which would clearly insulate the parent from the power of control." (See p. 614.)

However, as Earl Sandmeyer of the *New York Herald Tribune* points out, enfranchisement of bondholders might mean that control in many instances would pass to insurance companies, which now own about $3,696,000,000 utility bonds, some 15 per cent of aggregate utility capitalization. Since utilities are capitalized on a broad average basis of one-half in bonds and one-quarter

each in preferred and common stocks, it is obvious that to enfranchise bondholders would give them voting control in most cases.

Another interesting point affecting reorganization plans is the question whether holding company claims on a subsidiary may be subordinated to similar claims of other security holders, if the holding company has been guilty of "blameworthy conduct" in the management of the subsidiary. The question came up in connection with the securities of certain Utilities Power & Light subsidiaries, which Ogden Corporation (successor company) now holds and which it proposes to sell to Frank J. Lewis of Chicago for $1,600,000. This theory of subordination (said to be involved in recent Supreme Court cases) might throw a cloud on the clear title to many holding companies' securities, in relation to the same or similar publicly held issues.

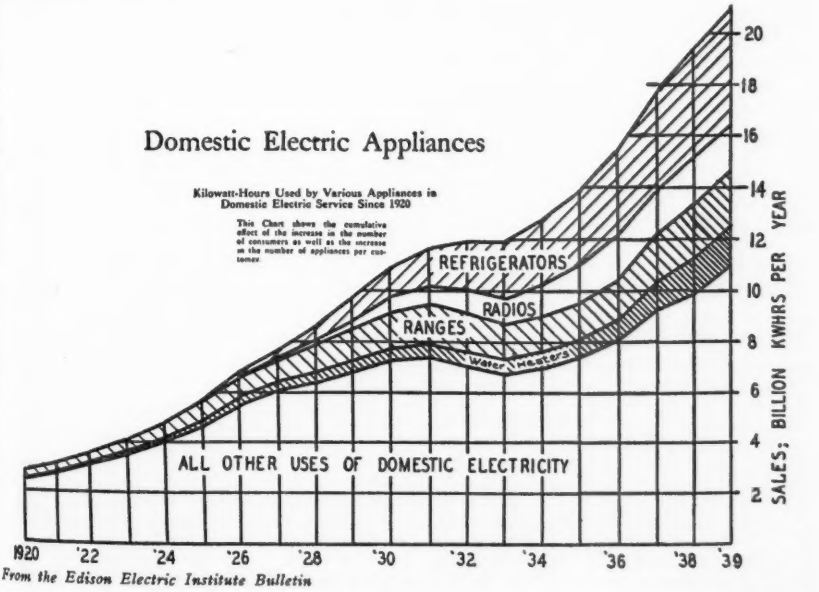
There has been no definite move as yet to seek congressional amendment to the Public Utility Holding Company Act for modification of § 11.

Illinois Iowa Power Company Decision

ILLINOIS Iowa Power Company, unconsolidated subsidiary of North American Light & Power Company—which is a subsidiary of North American Company—has been debarred from paying preferred dividends since the 1937 recapitalization, owing to a stockholder's suit.

A recent decision of the Illinois Supreme Court held that, in the case of another recapitalization, minority stockholders are bound by the action of a two-thirds majority. The suit against Illinois Iowa Power was initiated in May, 1937, and complete testimony has been heard by the circuit court judge of Champaign county.

It is possible that the recent decision will aid the court in its application of the Illinois Business Corporation Act. Regardless of whether the decision is favorable or unfavorable, it will clear up a long-standing uncertainty and permit the company to resume debt-refunding negotiations.



From the Edison Electric Institute Bulletin

EARNINGS STATEMENTS OF LEADING UTILITY SYSTEMS

Electric and Gas	*No. of Months Included*	*End of Period*	*System Earnings per Share (a) Last Period*	*Previous Period*	*Per Cent Increase*	*Per Cent Decrease*
American Gas & Electric	12	Feb. 29(b)	$2.61	$2.31	13%	..
American Power & Lt. (Pfd.)	12	Nov. 30(b)	5.77	5.51	4	..
American Water Works	12	Dec. 30	.95	.38	150	..
Boston Edison	12	Dec. 31	8.86	8.38	6	..
Columbia Gas & Electric	12	Dec. 31	.46	.31	48	..
Commonwealth Edison	12	Dec. 31	2.40	2.38	1	..
Commonwealth & Southern (Pfd.)	12	Dec. 31(b)	9.17	7.73	18	..
Consolidated Edison, N. Y.	12	Dec. 31	2.22	2.09	6	..
Cons. Gas of Baltimore	12	Feb. 29	4.99	4.13	20	..
Detroit Edison	12	Mar. 31	7.93	7.21	10	..
Elec. Power & Lt. (1st Pfd.)	12	Nov. 30(bc)	5.63	5.74	..	2%
Engineers Public Service	12	Feb. 29	1.64	1.17	40	..
Inter. Hydro-Elec. (Pfd.)	12	Dec. 31	8.43	3.76	124	..
Long Island Lighting (Pfd.)	12	Dec. 31	5.62	4.69	20	..
Middle West Corp.	9	Sept. 30(c)	.24	.22	9	..
National Power & Light	12	Nov. 30(bc)	1.07	1.27	..	16
Niagara Hudson Power	12	Dec. 31	.51	.50	2	..
North American Co.	12	Dec. 31	1.84(g)	1.55	19	..
Pacific Gas & Electric	12	Dec. 31	2.84	2.48	14	..
Public Service Corp. of N. J.	12	Mar. 31	2.90(b)	2.55	14	..
Southern California Edison	12	Dec. 31	2.36	2.10	12	..
Standard Gas & Elec. (Pr. Pfd.)	12	Dec. 31	7.08	1.76	300	..
United Gas Improvement	12	Dec. 31	1.07	.99	8	..
United Light & Power (Pfd.)	12	Dec. 31	7.66	5.16	48	..
Gas Companies						
American Light & Traction	12	Dec. 31	1.52	1.47	3	..
Brooklyn Union Gas	12	Dec. 31	2.42	2.25	7	..
Lone Star Gas	12	Dec. 31	.98	.88	12	..
Pacific Lighting	12	Mar. 31	2.85	4.79	..	41
Peoples Gas Light & Coke	12	Dec. 31	3.49(f)	2.48(f)	40	..
United Gas Corp. (1st Pfd.)	12	Jan. 31	11.50	12.06	..	5
Telephone and Telegraph						
American Tel. & Tel.	12	Feb. 29	10.61	8.53	24	..
General Telephone	12	Dec. 31	2.12	1.64(e)	29	..
Western Union Tel.	11	Dec. 31	1.32	D1.57	..	..
Traction Companies						
Greyhound Corp.	12	Dec. 31	2.37	2.05	15	..
Twin City Rapid Tran. (Pfd.)	12	Dec. 31	4.99	D1.46	..	..
Systems outside United States						
Amer. & Foreign Pwr. (Pfd.)	12	Sept. 30	5.36	5.88	..	9
Inter. Tel. & Tel. (d)	9	Dec. 31	.76	1.10	..	31

D—Deficit.

(a) On common stock, unless otherwise indicated following name of company.
(b) Data also available for month indicated.
(c) Data also available for quarter indicated.
(d) Excludes Spanish subsidiaries and Postal Telephone & Telegraph Company.
(e) Includes earnings of General Telephone Tri Corporation and subsidiaries from August 30, 1938 (date of acquisition).
(f) After reservation for rate litigation.
(g) On basis of new consolidation, $1.99 was reported.

What Others Think

Is the FPC Eating Away State Jurisdiction?

ENCROACHMENT of the Federal Power Commission on state jurisdiction has progressed to the point where the entire question of the distribution of regulatory power between the Federal Power Commission and the state commissions should be reëxamined. This is the conclusion which is reached in the latest *Contemporary Law Pamphlet* — the first in the new series on law and business published by the School of Law and the School of Commerce, Accounts, and Finance of New York University.

It is pointed out by the author, J. Rhoads Foster, lecturer in public utilities, School of Commerce, Accounts, and Finance, New York University, that under the decisions of the Federal Power Commission operating utilities are subject to its jurisdiction under the Federal Power Act, even though the facilities of the utility company are located wholly within one state and it neither buys service from, nor sells service to a person or corporation out of the state. Under the FPC's interpretation of the statute, an operating company is subject to its jurisdiction no matter how unimportant the transmission line used for interstate transmission or no matter how insignificant the proportion of its supply of energy that is sold at wholesale in interstate commerce or is otherwise transmitted across the state boundary.

WITH reference to the subject over which it has jurisdiction, such as accounts, mergers, and rates of depreciation, the authority of the Power Commission is as complete as if the utility engaged in no intrastate business whatever. With the exception of jurisdiction over wholesale rates, the authority of the commission to regulate the intrastate part of the utility's business is as complete as its authority to regulate the interstate business.

The article points out that the Federal Power Commission exercises jurisdiction over numerous subjects of regulation which formerly were within the exclusive jurisdiction of the state commission. "The Power Commission has done more than merely occupy a field which previously was a 'no man's land' in which state authorities were helpless."

In view of the existence of overlapping jurisdiction, it is said that full and active coöperation is essential to successful administration. Duplication of regulatory proceedings is said to be expensive, time consuming, and to create serious uncertainties. "However desirable as a means of avoiding conflict in the exercise of joint jurisdiction, the process of coöperation is cumbersome and uncertain. Federal commissions, perhaps unavoidably, attempt to exercise their power in a dominant manner. The state commissions do not, in fact, sit as equals in the 'coöperative' procedure."

The article says that for these reasons coöperative procedure has had but limited success in practice. This lack of success, however, is said to be due "not so much to unwillingness or lack of coöperative disposition on either side, as to the inherent difficulties of coöperative administration under conditions of duplicate jurisdiction."

IT is suggested as an alternative that with reference to the matters over which each is properly given jurisdiction, the authority of the state commissions and the Federal Power Commission should be mutually exclusive to the

fullest extent possible. The article concludes with a discussion of certain tests which are appropriately applied in any reëxamination of the rational distribution of regulatory powers.

The author expresses the opinion that "proper recognition of the nature of our democratic institutions creates a strong presumption in favor of the exercise of regulatory power by state government and places the burden of proof upon those who would withdraw such power from the state." It is said that the "gap" in state regulatory authority needed to be filled by the exercise of Federal authority, but that the gap does not have the significance other proponents of Federal control have sometimes contended. It is said that effective regulation of wholesale rates does not require that the Power Commission be given authority to fix the rate base or rates of depreciation for 60 per cent of the operating assets, including assets used for local generating and distribution, of the utility industry.

THE FEDERAL POWER COMMISSION AND STATE JURISDICTION. By J. Rhoads Foster. *Contemporary Law Pamphlets.* Law and Business Series. School of Law; School of Commerce, Accounts, and Finance, New York University. New York, N. Y. Series 4, No. 1. 1940.

How Will §11 of the Holding Company Act Affect Operating Utilities?

IN 1935, when the debate over the passage of the Holding Company Act was at its height, there were quite a few arguments abroad to the effect that the controversial § 11 was going to ruin the market for securities of operating companies. This section, which requires the SEC to make the holding companies "integrate" their holdings along prescribed geographic and economic lines, was viewed as meaning the eventual dumping of securities through forced liquidation, with disaster for every investor in the operating company.

That was in 1935. Oddly enough, since then not very much has been said or written regarding the effect of operating utility company securities. Now comes Chairman Jerome N. Frank of the SEC, who tells us that these early fears were highly exaggerated and that the enforcement of § 11 will not result in anything near a wholesale dumping of operating company securities.

Chairman Frank's views were contained in a signed article published in the April 13th (news issue) of *Electrical World.* He warned that the SEC "cannot make a gilt-edged security out of wallpaper," but added that if the gold is there, § 11 will not destroy a particle of it. On the other hand, the entire Holding Company Act, he says, is designed to improve the position of the operating company, because it recognizes that the backbone of the utility industry is the operating company and not financial superstructure. Chairman Frank's article went on to review the legislative background of § 11, whereby it becomes the "duty" of the SEC to bring about integration. He continued:

> Section 11 does not contemplate and should not bring about indiscriminate forced liquidation by holding companies of operating company securities. Some holding companies may seek to comply with § 11 by selling their holdings in scattered properties to the public through ordinary investment banking channels. The securities may be sold locally to consumers and small private investors, or they may be distributed more widely among the larger institutional investors and investment companies. Common stocks of sound operating utilities have shown themselves to be in demand.
>
> Indeed, the protest that operating company common stocks cannot be sold at the present time is revealed as absurd in the light of the recent success of the offering by Indianapolis Power & Light Company, the largest utility common stock issue in the past ten years. We have also seen the common stock issues of Newport Electric and Washington Gas Light eagerly taken by investors.

"SHORE, HIT'S A GOOD IDEE; BUT WHATTAYA DO WITH TH' DANGED STUFF AFTER HIT GITS HOT?"

As operating securities are sold, holding company securities will be retired. The chairman of the SEC viewed this substitution as financially sound and desirable. Each transaction will presumably include the exchange of stocks and properties among several systems to the end that each may ultimately obtain the most economical and efficient integrated unit. Chairman Frank stated:

> The capital structure of other systems will readily permit distribution in kind to the holding company's own security holders. If the securities are pledged under collateral trust indentures, or if for some other reason they are not available for distribution, the commission has the power to approve a fair and equitable plan to overcome these obstacles to distribution. Claims against the whole property of the holding company are thus converted into separate claims against individual parts of the properties, just as similar readjustments have been made in industrial securities pursuant to judicial decrees under the Federal antitrust laws.
>
> These and other devices permit existing systems to rearrange or reduce their holdings in conformity with the act so that each company controls a single integrated utility system, except as permitted under the "A-B-C" standards of § 11 (b) (1). Operating utilities which are a part of any such system under this procedure, may or may not be subject to regulation under the act.
>
> To the extent that stockholders' interests represent true equities in the earnings and assets of operating properties, they will, then, suffer no losses as a result of affirmative integration under § 11.

If there are doubts, however, and if holding company managers are unwilling to give up their diversified interests, Chairman Frank proposes a wholly different and very interesting course, whereby operating companies can be "insulated" from holding company control in conformity with the act. He explained this proposal as follows:

> In general, a holding company, under the act, is a company that controls an operating gas or electric utility company, and a subsidiary company is simply a company controlled by a holding company. The single indispensable factor, therefore, in the holding company-subsidiary relationship is not the ownership of securities by the parent, but the existence in the parent of power to direct or control the affairs of its subsidiary. Thus, a holding company may comply with § 11 by releasing control of its subsidiaries and assuming the status of a true investment company.

THE chairman cited the views of Commissioner Eicher of the SEC when he was a member of the House Committee on Interstate and Foreign Commerce, considering the holding company legislation. These were to the effect that any holding company system could maintain intact its existing corporate structure if it could satisfy the SEC that it had ceased to exercise any controlling influence over the "management and policies," and had become "simply a passive investment company."

This could be done, added the chairman, by "enfranchisement of the bondholders and preferred stockholders of the operating companies; by voiding of a portion of the voting rights on the securities held by the holding company, or by any other method which would clearly insulate the parent from the power of control."

For many holding companies, the simplest method of accomplishing this transformation would be to give independent holders of operating securities power to elect directors in such a manner and to such an extent as to divest the holding company from practical control over operating management. Again, Chairman Frank believes that the great mass of utility investors would undoubtedly benefit by the enfranchisement of senior security holders, who usually have a more substantial stake in the operating enterprise than the holding company. There is no reason, he says, "to believe that holding companies will suffer unfairly from their loss of control."

Once holding company control has thus been replaced by local control, he thinks there is a genuine possibility of advantageous distribution of sizeable blocks of junior securities of operating companies to substantial investors who would welcome the opportunity of being able once again to look after their own investments.

Chairman Frank is not alarmed by the fear that such divorce would operate to deprive subsidiary utility companies of servicing benefits not otherwise obtainable. First of all, he thinks that this factor has been exaggerated and that local management can get along perfectly well and even make use of mutual servicing relationships.

PRESIDENT C. W. Kellogg of the Edison Electric Institute, in an address before the Pennsylvania Chamber of Commerce in Hershey, Pa., April 10th, examined the interesting question of whether there is any absolute repugnance between "diversity" of utility investments through common holding company control and "integration" as required by § 11 of the Holding Company Act. On the surface, these respective terms might suggest trends in opposite directions.

To attain absolute diversity of investment, the risk is spread over wide geographic areas, whereas the theory of the Holding Company Act would seem to require holding companies to concentrate and otherwise curtail their properties to the point of regional or coördinated local holdings. Nevertheless, Mr. Kellogg believed that "general experience is to the effect that each operates relatively independently of the other." He stated:

> The word "diversity" expresses the

thought contained in the old adage about "not having all your eggs in one basket." The very fact that there is such an adage shows that the appreciation of the value of the principle of diversification is as old as human experience. In our modern business world the almost endless diversification of holdings by investment companies, the well-established practice of life insurance companies to spread their funds not only among a variety of investment channels, but throughout a wide geographic range, the familiar practice of fire and accident insurance companies to reinsure all individual risks over a given size—these and many similar methods in other lines of business are all designed to minimize individual risks by spreading them as widely as practicable over the general field of operations. . . .

Integration is also a valuable feature of business operation but its value in general depends upon principles which are entirely different from those on which the value of diversity rests. That is one reason, but not the only one, why the denial of value from diversity in glorifying integration, as is done in the Public Utility Holding Company Act, is illogical, since one does not exclude the other; they are not related in opposition to one another, like cold to heat or night to day.

THE essential value of integration, he said, is the economies in unit costs arising from large-scale operation which might be unobtainable for small, isolated operations. With respect to the value of integration in certain businesses, therefore, diversity enters as a factor to swell the economies of integration. In other words, diversity might be made more effective by integration, but the inherent value of diversity is independent of integration.

Mr. Kellogg referred to three main sources of integration economies: (1) The saving in charges on reserve capacity by two or more adjoining systems; (2) combining the output from interconnected operating plants; (3) savings resulting from the employment of load factor through diversity in the demand of integrated systems.

He went on to analyze specific groups of utility properties which had demonstrated the value of diversity in stabilizing the earnings of common ownership of individual companies spread apart as much as 2,000 miles. He said it was not necessary for all companies in an integrated system to be commonly owned in order to obtain the full benefits of integration which arise from economic and engineering causes.

Section 11 of the Holding Company Act, he felt, rests upon a double fallacy: (1) On the one hand, it purports to foster through common ownership an integration which not only has been in existence for many years, but has no reference to common ownership, and (2) it denies or destroys the value from diversity which does arise from common ownership.

The Economics of Extending Gas Mains

PROBABLY every gas company in the older sections of the United States has experienced a migration during recent years from closely populated cities and towns to outlying sections where people may enjoy suburban life. However, these same people, once used to the comforts of the city, do not want to relinquish them. The extension of the wired services of electricity and the telephone can usually be arranged, for obvious reasons, more easily than the extension of services involving the construction of underground piping systems, such as gas, water, and sewage.

Arthur Dixon, of the New Haven Gas Light Company, presented an interesting paper on how the gas companies get around this problem of extending service, before a recent meeting of the New England Gas Association at Providence, R. I.

It appears that the gas companies have a threefold problem to work out: (1) They are confronted by a loss of revenue through the extension of lines into new and thinner areas; (2) they must formulate a policy whereby mains can be located so as to serve these areas at a minimum loss; (3) should they postpone

service to the newly settled areas, competitive fuels move in and threaten to foreclose the territory against the time when the gas company may find it more economically feasible to make the extension.

THE first attack on the problem is to have a utility personnel especially equipped to analyze the economics of new extension of mains. He summarized his company's policy concretely as follows:

> We consider the cost of every main on a 4-inch basis. By experience it has been found that new mains can be run if they cost approximately four times the estimated annual revenue for the second year. Sometimes a section under consideration is exceptional, due to location, type of residences, or success of the men handling the development. These points are weighed carefully. If we find insufficient reasons for seeking this business, we ask for a guaranty. Under a guaranty all the gas used is paid for by the customers at our regular rate and the guarantor pays for the unused gas at approximately one-fourth the regular rate.
>
> By studying our records we found that a fair average gas consumption for a family using a range to be 30 MCF per year at a cost of about $1.15 per MCF. Under this condition we would lay about 100 feet of main. But there are two other factors to consider if the house under consideration lies beyond this 100 feet:
>
> (1) We have water heaters, refrigerators, and house heaters to sell with a capable sales force to make contact with the owner in an effort to bring the gas load up to the required amount. . . .
>
> (2) We can investigate the possibilities of further development along the proposed main and base our figures on an estimate of future building. This not only gives us the opportunity of extending the main, but also many times furnishes us with prospects for future appliance sales.

Mr. Dixon stressed the necessity of taking care to estimate prospective consumption as accurately as possible. He cited instances of how such estimates are bound to go awry, despite the most careful judgment.

EXTENSION of mains in new territory can sometimes be the basis for surprisingly profitable operation, if advantage is taken of the opportunity for vigorous promotion of the service. Mr. Dixon recalled a typical instance:

> We were requested to lay a main into a wooded section under development to a house lying about 1,000 feet from our existing main. Naturally, we were skeptical about ever getting sufficient financial returns to make such an extension economically possible. We asked for a guaranty on the consumption. Considerable discussion arose, and we suggested that gas be used to heat the house. The developers accepted our proposition, and the main was laid after we received an order for the heating plant and automatic water heater. As the house was being built, it was thought to use it for display. We offered to advertise, promoting the gas appliances, and have salesmen on hand to demonstrate them. A furniture company supplied the necessary furniture and fittings, and the house was opened to the public.
>
> Although located 6 miles from New Haven, crowds inspected it. As a result it was sold in a short time. Suddenly building activity started all around this house and it was found necessary to extend the main farther. Between September 1, 1935, and January 1, 1939, we had laid 4,046 feet of main supplying 26 houses. . . .
>
> To further the use of gas we have sponsored two more model houses since the first went on display and were preparing plans for a fourth, but it was sold before it was finished. As the development stands today, we are still maintaining the same proportion of business, and there are about 45 houses either occupied or in the course of construction. . . .

In conclusion, the speaker stressed the necessity, in view of the mobile population trend in the United States, for each company to establish a general policy whereby new territories can be opened up on a financial basis. This would include vigorous promotion activity above noted.

"SELF-examination of a constructive but none the less sharply critical nature has become more and more the keynote of the gas industry's leadership."

—EDITORIAL STATEMENT, *Gas magazine.*

Edison the Man

EARLY last month Metro-Goldwyn-Mayer released the second of the 2-part motion picture biography of Thomas Edison, starring Spencer Tracy in the rôle of the great American inventor in his more mature years. (The first part, starring Mickey Rooney, released earlier in the year, covered Edison's boyhood and juvenile ages.) Rita Johnson, in the rôle of Mary Stilwell, Edison's wife, appeared with adequate support in the subordinate rôles.

The following is a synopsis of the Spencer Tracy picture:

In a replica of old Independence Hall, world-famous personalities have assembled to honor Thomas Edison, now eighty-two, at the Golden Jubilee of Light in 1929. While they wait in the banquet hall, a secretary searches for Edison and finds him giving an interview to a boy and a girl, high school reporters. Rushed to the banquet, Edison lets his thoughts wander to the past as men describe his achievements.

In 1869, Edison is a young unknown telegrapher who comes to the Gold Indicator building in New York city to see a friend, Bunt Cavatt. The latter, a footloose telegrapher, takes Edison's arrival as an opportunity to move on, leaving Edison to help Mr. Els, Bunt's uncle and janitor in the building. Edison, penniless but rich in philosophy, helps clean the building, carrying on experiments in the basement toward an alluring goal—the invention of the electric light.

HE needs money to experiment and determines to talk Mr. Taggart, manager of the company, into inventing a new stock ticker. His efforts are fruitless until, during a market crisis, the master transmitter breaks down and Edison repairs it quickly. Taggart offers him a job but Edison wants only a chance to talk business as his reward. General Powell, president of Western Union which owns the Gold Indicator, arrives opportunely and Edison tells them his hopes. Taggart would turn the fellow away curtly but Powell is impressed by Edison's vision and enthusiasm.

He sends Edison to the company's shops at Newark, promising to buy anything practical the young man invents. There, Edison meets Mary Stilwell, who works at the Keystone Telegraph Key Company located above the workshop. He chooses a group of men to construct from his plans. When the ticker is finished, Edison takes it to Powell and Taggart hoping to sell it for $2,000 and was astounded when he received $40,000.

He and Mary are wed and, with the money, he builds his Menlo Park laboratory and starts work on inventions with men who have joined him from the Western Union workshop. A daughter and a son are born to the Edisons and the years pass. Expenses far exceed returns from inventions and Edison is in pressing need of a loan from someone.

Meanwhile, Bunt has returned and begins borrowing from Edison. Mr. Els shows up jobless, and Edison puts him to work. But the sheriff also arrives with notice of attachment from the machine company and Edison is desperately in need of cash. Failure now would throw his loyal men out of work. Action is needed and Els suggests Edison try to invent that electric light. The stimulus sets Edison to frantic work. Day and night he works in his laboratory until the men become worried over his health and mentality. Even Mary gets worried, but nothing can halt Edison. But experiment after experiment fails and Edison finally rushes to Powell, intending to offer him a partnership in return for a loan. He must keep the plant open, for the sake of his men and their families.

BUT Powell is dying. He tells Edison he has faith in that light but not to trust Taggart too much. Unwilling to worry Powell, Edison says his affairs are in good shape. He goes to Taggart to ask for $40,000 and receives an amazing reply. Taggart is willing to give Edison a hundred thousand, but he wants the right to tell Edison what to invent and

The Washington (D.C.) Post

WHAT! ME APPEAR IN COURT!

what not to work on. Angry, Edison stalks out. Powell dies, and help now is denied him.

At the end of his resources, Edison raises enough to pay off his men in full and tells them there are no more jobs. He goes home to Mary discouraged; she bolsters his spirits by telling him nothing matters so long as he keeps his dreams. Edison goes back to work the next morning and finds all the men on the job—willing to work without salary. Then, by chance, Edison discovers the principle of the talking machine and invents it in time to hold off the sheriff. He now becomes a celebrity.

The flamboyant Bunt brings on the next crisis when he undertakes to give reporters a story on Edison and brags that Edison has invented the electric

light. The story breaks big and causes gas stocks, in which Taggart is a heavy investor, to drop. Taggart tells his cohorts not to worry, that Edison has proved himself a fake. Scientists brand the inventor as a charlatan.

Being discredited forces Edison into his work on that light with renewed effort. He must find the proper filament and thousands of metals and alloys are tried. Finally, Edison hits upon the vacuum which proves the right track for the globe if the proper filament is found. Nine thousand experiments fail to solve the puzzle.

By chance, he gets the idea that thread covered with carbon might do the trick. To the joy of the entire plant, it is successful. On October 21, 1879, the new light has burned for forty hours. Edison goes after the franchise to light New York city. Taggart gets one alderman to argue against the franchise. Edison offers to put all wires underground, doing everything at his own expense, thereby gambling all of his resources. The aldermen vote the franchise and give him only six months in which to do the job.

SURMOUNTING numerous obstacles, Edison and his men near the deadline. There is no dynamo large enough to light the district where electricity is being installed. Edison and his men work feverishly to design and build them in time. The morning of the final day, September 4, 1882, arrives and the dynamos, completed, break down when one runs the other as a motor. The men, led by Edison, go to work. The governor shaft is altered in five hours and while Taggart is celebrating Edison's failure, the lights come on. Edison has won.

And that is the story Edison sees at eighty-two. Yet, he does not look backward—but ahead to a sort of Utopian world of the future, built by men with genius.

Should the Federal Government Regulate Waterways?

THE question whether the waterways and highways of the United States should have the same Federal regulation as the railroads was debated over the radio on the evening of March 11th by representatives of the three transportation mediums and Senator Burton K. Wheeler of Montana, who with Representative Clarence Lea has introduced a bill to put waterways under the jurisdiction of the Interstate Commerce Commission.

Senator Wheeler, the first speaker in this American Forum of the Air discussion over the Mutual Broadcasting System, upheld government regulation of all forms of transport, with recognition of the inherent advantages of each type of carrier, and was supported by J. J. Pelley, president of the Association of American Railroads.

William J. Driver, chairman of the National Rivers and Harbors Congress, and Chester Gray, director of the National Highway Users Conference, took the contrary view. Mr. Gray thought it would be much better to relax regulation of the railroads than to "straitjacket" all types of transport.

MR. Wheeler, who is chairman of the Senate Interstate Commerce Committee, said that low water rates had increased the profit of many great monopolistic industries, but they had not passed on these economies to the farmer and the consumer. He continued:

> The water carriers who have and who are getting subsidies as well as huge loans from the government at very low rates of interest should be the last to complain about regulation.
>
> Water carrier lobbyists may be responsible for these pork-barrel appropriations, but the taxpayers bear the burden.

Mr. Pelley said that the railroads were in financial difficulties because they had to meet all their own costs and pay taxes on their roadway and equipment while

the investment to build and maintain highway, waterway, and airway routes had come from the public treasury.

He argued that the remedy was to treat all agencies of transport alike in matters of taxation, regulation, and public policy.

On behalf of the waterways, Mr. Driver denied that the difference between water and rail freight rates was merely pocketed by the middle man. On the premise that the aggregate freight bill paid in the distribution of a commodity both by rail and water was one of the elements of production, he contended that in so far as it was made less costly by water transportation the base price for the commodity all over the country was reduced, and this resulted in a uniform distribution of water transportation throughout the country.

His argument was that the public got the benefit of the reductions made in competing forms of transportation by the construction of waterways, but that the waterway did not get the benefit of the traffic.

Mr. Gray objected that

> . . . too much of this legislation is designed to put the different methods of transportation on an equality so that one can have no advantage over another.
>
> The people are gradually becoming aroused to the danger that no material benefits will be permitted them even though we have five methods of transportation in the nation.

He concluded that there must be less rather than more regulation of the transportation machinery.

Notes on Recent Publications

BETTER YEAR FOR WORLD'S LARGEST UTILITY. *Business.* March, 1940.

GOVERNMENT AND ECONOMIC LIFE. Development and Current Issues of American Public Policy. Volume I. By Leverett S. Lyon, Myron W. Watkins, and Victor Abramson. Published by The Brookings Institution. $3.

IMPROVE YOUR BUSINESS LETTERS. By Robert Latham. Bruce Humphries, Inc., 306 Stuart Street, Boston, Mass. Price $2. 188 pp.

SURVEY OF AMERICAN LISTED CORPORATIONS. Volumes I and II. A Work Projects Administration study sponsored by the Securities and Exchange Commission. 1940. Distributed by the SEC.

These volumes present information, by industry groups, for companies having securities registered with the Securities and Exchange Commission at June 30, 1939. In addition to presenting figures for 1938, these reports supplement a number of separate reports in an earlier series published as the "Census of American Listed Corporations" which presented information on individual companies for the years 1934-1937. All utility companies are, of course, included.

This project was begun in an attempt to make more accessible to the public the information in the commission's files, thus carrying out the policy of the Securities Exchange Act that reliable information concerning listed corporations be made readily available to the public. The present studies continue the attempt made in the earlier series of reports to bridge the gap between the valuable data available in the commission's files and the many potential users to whom the data would otherwise remain relatively unavailable.

The survey as constituted includes about 2,000 companies, which is somewhat more than 80 per cent of the 2,452 companies having securities listed and registered on national securities exchanges at June 30, 1939.

The survey includes only those companies which have securities listed and registered on national securities exchanges. Registration is not required of companies with exempt securities or securities admitted to unlisted trading privileges or of companies with securities traded on exempt exchanges. Certain types of enterprises registering securities with the Securities and Exchange Commission but which were not covered are: Carriers reporting to the Interstate Commerce Commission and all other railroads; communication companies reporting to the Federal Communications Commission; insurance companies; banks and trust companies; bank holding companies; bondholders' protective committees; and foreign issuers other than Canadian and Cuban.

Results of the study are summarized by industry groups to permit ready reference to that portion of the data in which an individual is most interested. A list of the industries into which registrants included in the survey have been grouped for summary purposes is given on the inside back cover.

The March of Events

Seeks Boulder Dam Cash

THE administration advised Congress on April 23rd that legislation to adjust the financial set-up of Boulder dam would meet with its approval if it were amended to require, among other things, immediate liquidation of a large part of the government's investment in the undertaking.

Secretary Ickes reported the administration's views to the House Irrigation Committee. The other changes he asked were mostly minor. The bill was introduced by Representative Scrugham, Nevada Democrat. Ickes said:

"I believe that the provisions of the proposed legislation are consistent with the statutory provisions governing other major multiple-purpose projects and that it provides for a desirable rearrangement of the rights and interests of the parties affected thereby."

The bill would completely revise the fiscal operation of the project in line with more recent government ventures in the power field. It would reduce the interest rate on the government's investment from 4 to 3 per cent, waive repayment of a $25,000,000 flood-control charge until other advances had been repaid, permit payment of $300,000 each annually to the states of Arizona and Nevada, and authorize establishment of a Colorado river development fund, into which $500,000 would be paid yearly.

Advocates of the legislation have said that it would permit a lowering of power rates and promote friendliness among the seven states of the Colorado river basin.

The plan, attributed to the President, contemplates the creation of the Boulder Canyon Project Finance Corporation, operating along the lines of the RFC.

Senate Approves Dam

THE Senate voted recently to authorize the Clarks Hill dam on the Savannah river, estimated to cost $28,000,000. Proposed by Senator George, Democrat, Georgia, the authorization was written into an appropriation bill for civil functions of the War Department.

The Clarks Hill amendment involved no immediate appropriation, but if later approved by the House it would make the project eligible for future appropriation.

The dam is designed for navigation improvement, flood control, and the generation of hydroelectric power. The project has been recommended by Army Engineers.

State Boards Permitted to Intervene

INTERVENTION by the Wisconsin Public Service Commission in five holding company integration proceedings under the "death sentence" of the Holding Company Act was permitted last month by the Securities and Exchange Commission. In addition, the Pennsylvania Public Utility Commission was allowed to intervene in the Electric Bond and Share proceedings.

These interventions came as the first indication of the interest which state commissions may be expected to take in working out geographical integration and corporate simplification of the major holding companies under the "death sentence."

The holding company proceedings in which the Wisconsin commission was permitted to intervene are those of Electric Bond and Share, the Middle West Corporation, Standard Power & Light Corporation, the North American Company, and the United Light and Power Company.

Power Contract Approved

THE Aluminum Company of America on April 16th ordered $2,843,750 of additional government power to be used in its plant in Vancouver, Wash., in a 5-year term. Secretary Ickes approved a contract between the company and the Bonneville Administration for a second block of 32,500 kilowatts of power produced by Federal dams on the Columbia river.

Last December the company entered a 20-year contract for 32,500 kilowatts and started construction of a $3,000,000 reduction plant in Vancouver to manufacture aluminum and aluminum alloys from native ores. It was the company's first western venture. The new contract specified a price of $17.50 a kilowatt year.

The Interior Department reported that the Aluminum Company officials requested the additional power in view of the unusual demand for aluminum resulting from the situation in Europe and the preparedness program in the United States.

SEC Investment Trust Bill

MAHLON E. Traylor, president of Massachusetts Distributors, Inc., of Boston, last month told a Senate banking and currency subcommittee that the Wagner investment trust bill would place investment trust companies completely under the power of the SEC. Stating that the bill goes far beyond anything needed to cure any existing abuses, Mr. Traylor said the measure would give "dangerously broad" discretionary powers and legislative authority to the SEC.

If the bill is passed in its present form, Mr. Traylor said, "Congress will be giving the SEC carte blanche to regulate the investment trust companies in virtually any way it sees fit. It is difficult to see how anyone can successfully run a business subject to personal regulation dictated by a constantly changing commission personnel."

Mr. Traylor charged that the bill would subject the investment trust business to "objectionable censorship, red tape, and bureaucratic control" and would discriminate against the business. He also criticized sections of the bill which would limit the size of investment trust companies.

FPC Gas Orders

THE Federal Power Commission recently suspended an increase in rates contained in a proposed schedule for interchange of natural gas between the New York State Natural Gas Corporation and the Allegany Gas Company and ordered a public hearing to begin at Washington on July 8th.

The proposed increase was from 40 cents to 45 cents for a thousand cubic feet and covered emergency supplies of natural gas which are interchanged between the two companies. Pipe lines of the Allegany and the New York companies cross at several points and both are engaged in transporting and selling at wholesale. The commission found that the higher rate may result in excessive rates or charges to Allegany.

The effective dates of suspension of rates ordered by the FCC were: not exceeding five months from April 25th for the New York State Natural Gas and from April 11th for the Allegany Gas Company.

Natural gas companies subject to its jurisdiction are required by the Federal Power Commission to furnish data detailing their history, acquisitions of gas operating units or systems, their original cost, and other related information in Order No. 73, announced on April 15th, requiring submission of supplemental data in connection with Gas Plant Instruction 2-D of the commission's uniform system of accounts under the Natural Gas Act.

Statements to be furnished cover nine different factors in gas plant accounts, including: Origin and development of each company, including consolidations and mergers; original cost as of the date of each acquisition and book entries relative to the same; amount determined by appraisals in gas plant accounts in lieu of cost; statement showing in detail gas plant as classified in the books of account immediately prior to reclassification; statement showing gas plant as of January 1, 1940, classified as prescribed in the uniform system of accounts; details reflecting gas plant acquisition adjustments, and statistical information relative to production plants for both manufactured and natural gas, storage, transmission, distribution, and general plants.

TVA Saves Public

THE Tennessee Valley Authority's power rates are saving its 375,000 customers about $8,600,000 a year, former Senator James P. Pope of the TVA's board of directors declared in an address before the Southern Conference for Human Welfare, which held a 3-day session in Chattanooga last month.

Mrs. Franklin D. Roosevelt made an address and then participated in a panel discussion on the topic "Children in the South."

Mr. Pope said the $8,600,000 saving "is a contributor to human welfare in this part of the South of tremendous value."

Transportation Analysis Filed

THE results of a 6-year study of the extent to which the Federal and local governments subsidize various forms of transportation in the United States, the first comprehensive and scientific analysis of the question ever made, were published last month by Joseph B. Eastman, chairman of the Interstate Commerce Commission, in his former capacity as Federal Coördinator of Transportation.

Contradicting the contention of the railroads that their competitors on the highways have an undue advantage by virtue of the aids which the public freely provides, the report concluded that highway users as a class, have paid their way in taxes, at least since 1927.

While Mr. Eastman ceased being Federal coördinator in 1936, the project of "an impartial and authoritative investigation" of the subsidy question which he started while serving in that capacity was carried on in the intervening years by Dr. Charles S. Morgan, now assistant director of the ICC's Bureau of Motor Carriers, who started the technical study of the subsidy problem as director of the coördinator's research department in 1933.

The 4-volume study, entitled "Public Aids to Transportation," goes far beyond the mere question of how much net aid each branch of transportation has received from the various tiers of government and goes into the question of the basic surplus of transportation facilities existing in the country and what to do about them. Since it estimated about $6,-

000,000,000 of further transportation investments by 1950, the summary stressed the need for "deliberate" national planning.

The report is expected to provide basic material for the work of Owen D. Young, retired chairman of the board of the General Electric Company, when he undertakes a coördinated study of the nation's transportation problems as head of a committee to be named by President Roosevelt. The acceptance by Mr. Young of the committee leadership was announced at the White House last month.

Alabama

Municipal Workers under Civil Service

CIRCUIT Judge Gardner F. Goodwyn on April 12th ruled, in effect, that employees of the Bessemer electric distribution system come under the jurisdiction of the Jefferson County Civil Service Personnel Board. Judge Goodwyn's decision in the "test" case was expected to be appealed to the state supreme court, since the petition for declaratory judgment raised several points on which there was no prior ruling by the high court.

Attorneys for both parties indicated when the petition was filed that an appeal would be taken regardless of how Judge Goodwyn ruled. Attorneys for the utilities board argued in the petition decided by Judge Goodwyn that employees of the electric distribution system, which distributes TVA current, should not be under civil service because receipts from the sale of power from which the workers are paid are handled separately from Bessemer revenue and never become a part of the city's general fund. The system was made possible through Public Works Administration loans and grants.

Arizona

Oppose Utilities Bill

THE Arizona Municipal League will maintain a "hands off" policy in the proposed home tax exemption program and will oppose the bill to place municipal public utilities under control of the state corporation commission, the executive board decided at its closing session at Phoenix last month.

The board, after discussing the home tax exemption proposal pro and con, voted unanimously to take no part in the measure but to go to the state legislature for relief if the initiative is passed. Board members reaffirmed opposition to the bill to place municipal public utilities under control of the state corporation commission, known as house concurrent resolution No. 13, adopted by the last legislature as a constitutional amendment to be voted upon at the general election.

It was said league members would start immediate circulation of petitions for an initiative measure to be placed upon the ballot granting cities a share of the gas tax. The proposal would ask that cities receive 5 per cent of the state gas tax the first year, 10 per cent the second, and 15 per cent thereafter.

Board members also adopted a resolution opposing the shift of the tax burden to cities, pointing out that in the last five years the ratio of all taxes paid by Arizona municipalities has jumped from 13 to 65 per cent.

Arkansas

Low Gas Rates Expected

PROSPECTS for an early reduction of the Arkansas Louisiana Gas Company's rates were heightened on April 11th as the state utilities commission recessed a formal hearing on the issue and went into conference with company officials. Commission Chairman Thomas Fitzhugh announced the recess. The conference began immediately.

The hearing was started March 26th after a 5-year investigation of the company's rates. Since that time only six days had been devoted to the taking of testimony. There was a 10-day recess shortly after proceedings were begun.

Fitzhugh said lawyers for the company suggested there might be a reconciliation of valuation and operating figures presented by the company and the commission's staff. He said:

"If results can be obtained by the conference method equal to those which might be accomplished from a long hearing, the commission would favor the former course. If an agreement could be reached in the public's interest, we would be inclined to accept because that would mean an immediate reduc-

tion of rates and eliminate any delay through court proceedings."

The Arkansas Louisiana, in a stipulation signed about a year ago, agreed that if its rates were ordered reduced $500,000 annually for residential customers, it would make an annual refund in such amount for 1938 and 1939.

TVA Purchases Reported

THE Arkansas Power & Light Company purchased 142,262,000 kilowatt hours of electricity from the Tennessee Valley Authority last year at a cost of $423,863.97, annual operations report of the company filed with the state utilities commission revealed recently. During the year the TVA purchased 2,210,000 kilowatt hours from the utility company for $10,687.30 under a contract which provided for power exchange at certain periods with no money involved.

The report said the city of North Little Rock bought 9,216,000 kilowatt hours from the Arkansas Power & Light Company for $90,568.92, or 9.8 mills per kilowatt hour.

Other wholesale sales reported included: Citizens Electric Company, Hot Springs, $38,570; Arkansas-Missouri Power Corporation, Blytheville, $213,751.50; West Memphis Power & Water Company, $12,305.31; Louisiana Power & Light Company, $10,085.27.

California

Ickes Hails Hetch Hetchy Decision

SECRETARY of the Interior Harold L. Ickes on April 23rd assured the people of San Francisco of his readiness to coöperate in the consideration of new plans for the distribution of municipal electric power to consumers in place of the present sale by the Pacific Gas and Electric Company, declared invalid by an opinion of the U. S. Supreme Court in the historic Hetch Hetchy Case. (See page 633.)

Because of the importance of the issue, it is questionable whether San Francisco will attempt another referendum on a public power proposition at the November election. Instead, a special election may be called. The city had nearly a month as a matter of right to file a petition for rehearing before the mandate of the Supreme Court is returnable to the Federal district court in San Francisco. There was a bare chance that further delay would carry the matter over to the October term.

It is likely that the Federal district court will allow the city at least six months to make plans either for a municipal distribution system or an alternative source of electric supply. Ickes said the city would double its income if Hetchy power was distributed through a publicly owned system.

PG&E Buys from Edison

THE Pacific Gas and Electric Company will buy 75,000 kilowatts a day more from Southern California Edison under a contract approved on April 12th by the state railroad commission. The contract involves only the years 1942 to 1944, inclusive. PG&E explained it was buying from Edison rather than building its own new generating units, because it wanted to be in position to absorb the maximum amount of power from the Central Valley project's Shasta dam when it is completed in 1944.

To meet the demands of the contract, Edison must build a second power line to Boulder dam and contract with the government for building a third generator of 82,500-kilowatt capacity. PG&E will pay $1,663,000 a year for the guaranteed availability of 815,000,000 kilowatt hours a year and pay 1.32 mills per kilowatt for energy actually delivered. The northern company now buys 75,000 kilowatts a day from Edison.

Florida

Gas Rate Cut Announced

A NEW reduction in gas rates was recently announced by the Peoples Water & Gas Company, effective May 1st throughout their system. This was reported to be the eighth voluntary reduction the company has made within the past eight years and was said to represent a potential saving to customers in Miami Beach, Surfside, Fort Lauderdale, North Miami Beach, North Miami, Dania, Hollywood, Hallandale, and Biscayne Park, of about $35,000 annually.

C. D. Littlefield, general manager, said the reduction chiefly affected those using automatic gas water heaters. Littlefield said a substantial reduction to this class of customer is possible because an automatic water heater creates a steady demand throughout every day, as contrasted with the high demand caused by gas ranges at meal times, only two or three times a day. This steady type of

load, he said, can be served much more economically than spasmodic heavy loads.

A new rate "C" for customers already enjoying 100 per cent automatic water heating has been inaugurated, whereby they can save approximately 15 per cent on their monthly gas bills. Customers now using gas only for cooking and refrigeration may become eligible for the new "C" rate by the installation of an automatic gas water heater.

Illinois

Consider Utilities Plan

MEMBERS of the East St. Louis city council were scheduled to meet with the state commerce commission at Springfield on May 8th to discuss a proposal by the city to purchase gas, water, and electric utilities. The council passed a resolution April 3rd, asking the state commission to place a valuation on the utilities.

Mayor John T. Connors expressed the opinion that rates charged by the three companies—Illinois Iowa Power Company, East St. Louis & Interurban Water Company, and the Union Electric Company of Illinois—could be reduced through city ownership.

Iowa

Right to Build Dam Refused

THE state executive council on April 17th denied the application of the first Iowa Hydro Electric Coöperative of Muscatine to build a large dam across the Cedar river near the town of Moscow in Cedar county. The coöperative's proposal involved the erection of an earthen dam with a concrete top slab. The dam would have been 35 feet high and 9,570 feet long and would develop 20,000 horsepower.

The application was first presented to the executive council August 21, 1939. The council held the public hearing on the proposal on February 5, 1940, at which numerous proponents and opponents presented arguments for and against the dam.

The matter had come before the executive council because of a state law requiring that body's approval before any such streams such as the Cedar river can be dammed. The council's refusal to approve the project was grounded on the fact that the coöperative had not obtained permission of the state highway commission as required by law. It also felt the coöperative had failed to make an adequate showing of financial responsibility.

Franchise Ballot Ordered

DISTRICT Judge T. H. Goheen on April 11th ordered Mayor J. F. Walter to set a date for a special election to determine whether the Interstate Power Company's franchise at McGregor shall be continued.

The writ was issued a few hours after the city council had opened bids for construction of a proposed $120,000 municipal light plant. As a result of the writ, the council will be unable to award any contracts until after the election.

Water Election

IOWA City's city council last month resolved to hold an election on May 7th for the purpose of determining whether or not the city should establish a municipal water system.

The decision to hold the election came after a 3-hour session in which the council authorized Mayor Henry F. Willenbrock to sign a contract tendered by the Iowa Water Service Company, offering to transfer the present system of the company serving Iowa City for a price of $750,000 with bonds at 2¾ per cent.

Kentucky

Power Question to Voters

THE Paducah city administration will place before the electorate in November the question of erecting a municipal power plant if the Kentucky Utilities Company refuses to sell its Paducah properties, Mayor Pierce E. Lackey stated recently following a conference with City Manager James P. Smith and a Cincinnati consulting engineer.

The city will give the power company a final chance to set a price on its Paducah plant and accept the city's proposal to purchase the property, the mayor said. That information was contained in a letter mailed last month to Robert M. Watt, Lexington, president of

the utility company, from the city manager's office. Watt had previously said his concern would not sell the plant in Paducah unless forced to sell.

The city has retained the engineering firm of Burns & McDonnell to make a survey to determine cost of building a competitive power plant.

Approves Rate Reductions

THE state public service commission on April 15th announced its final approval of rate reductions by the Kentucky-Tennessee Light & Power Company which it estimated would mean about 6 per cent savings on residential users' bills, around 8 per cent to commercial users, and about 12 per cent to municipal street lighting users.

Tentative approval of the reductions was given some time ago. They were effective on bills rendered after May 1st. The company, which has headquarters in Bowling Green, operates in a number of Kentucky towns.

The commission on the same day also authorized the Union Light, Heat & Power Company of Covington to refinance a large amount of its obligations at a lower interest rate. The company was granted permission to issue as of April 1st, $4,000,000 in 4¼ per cent notes maturing in 1970, and to increase its capital stock from $5,000 to $30,000, both $100 par value per share.

The Kentucky Court of Appeals on April 16th took under advisement a plea from the Union Light, Heat & Power Company to reconsider its order for refunds to Covington gas consumers which the company's counsel estimated would total "at least $300,000." The court ordered the repayment February 23rd, upholding Kenton Circuit Court's decision that Covington's rate contract, made in 1927 and expiring in 1932, bound the company to give the people of Covington the same rates as the jointly owned Union Gas & Electric Company put in effect in adjacent Cincinnati.

Louisiana

Gas Savings Announced

THE recently reduced gas rates affecting 35 southwest Louisiana communities will result in a $109,000 yearly saving to the consumers, it was announced by E. M. Cannon, district manager. The purpose of the rate reduction was to benefit the small and medium amount user of gas and to encourage the greater use of gas in the home and business, Mr. Cannon declared.

The state public service commission in its order announcing the rate reduction said the new rate would reduce by 25 per cent the first block after the 200 cubic feet allowed for a minimum of $1 per month, in the case of residential consumers. This first block consists of 2,800 cubic feet per month, the present rate for which is 10 cents per 100 cubic feet, and this, under the new rate, will be 7.5 cents per 100 feet. That is to say, 2,800 cubic feet of gas which formerly cost $2.80, will, under the new rate, cost the consumer $2.10, a saving of 70 cents per month, the order stated.

An analysis of all residential natural gas consumers using more than 200 cubic feet per month disclosed the majority of them use from 1,500 to 5,000 cubic feet per month, and these customers would save from 14 per cent to 18.4 per cent under their bills.

Michigan

City Backs Gas Inquiry

THE opinion of city attorneys that Detroit gas rates "constitute a $1,500,000 a year holdup" was supported recently by members of the city council who officially went on record as favoring a U. S. Senate investigation of natural gas distribution in the Middle West and petitioning the Federal court of Wilmington, Del., to withhold action on the legal battle for control of the Texas-Detroit pipe line until that investigation can be completed.

The resolution was recommended to the council by James H. Lee, assistant corporation counsel.

Mississippi

Senate Enacts Compromise Tax

COMPROMISE finance measures to tax utilities one per cent of their receipts and to authorize the refunding of $2,000,000 in state bonds were passed on April 17th by the state senate.

The levy will fall upon companies which

sell or operate electricity, water, gas, telephone and telegraph systems, oil and gas pipe lines, busses and trucks operating as common carriers, waterworks systems, street railways, and express companies. Chairman John Kyle of the senate finance committee estimated the tax would return $400,000 in new revenue during the biennium.

The tax measure, which was sent to the house, would impose a one per cent levy on the gross intrastate receipts of these corporations in addition to other taxes. Corporation representatives had opposed it as "discriminatory" and "punitive" taxation.

Dr. James C. Rice of Natchez offered an unsuccessful amendment to place the rate on electricity and gas companies at 10 per cent and upon telephone systems at 8 per cent. Rice, as in the past, insisted that these utilities charge "exorbitant" rates and that a study of Federal Communications Commission statistics would prove they could stand such a tax. The senate had already passed a bill—which he himself predicted would be "scuttled" in the house—which placed a 10 per cent tax on electric, water, and gas companies.

The state senate on April 12th received from the house a concurrent resolution memorializing Congress to appropriate sufficient funds to make possible furnishing of TVA electric power to Lauderdale, Clarke, and Wayne counties. The resolution, introduced by a group of east Mississippi legislators, pointed out that TVA has extended power lines to Kemper and Winston counties and that "the Mississippi Power Company has lines which can easily be connected with the transmission lines of the TVA at DeKalb."

Missouri

Gas Hearings to Open

HEARINGS on an appraisal of the St. Louis County Gas Company, to determine the fair valuation of the company's property for rate-making purposes, will begin at Jefferson City on May 20th, Chairman J. D. James of the Missouri Public Service Commission announced last month.

Auditors and engineers of the state commission, which ordered the appraisal on its own motion, have been at work on the valuation for nearly two years. The reports of the commission staff on an audit and property inventory have not been completed, but will be filed before the hearings open, according to recent statements.

The company is a corporate affiliate of the Union Electric Company of Missouri, both being controlled by the North American Company.

Pays Tax under New Schedule

FIRST payment under a new schedule of license taxes for street cars and busses was made by the Public Service Company by check for $307,484 and received recently by the city of St. Louis.

Of that amount, $239,084, covering a period from March 19, 1939, to last March 31st, was payment of the 2.9 per cent gross city rail revenue levy agreed on early last month when a revocable permit for use of the streets by street cars was issued by the board of public service. The amount was about the same as was paid under the franchise arrangement replaced by the permit.

The remainder, or $68,400, was payment of a 2 per cent increase of a similar tax on busses, retroactive since the same date in 1939. An ordinance changing the rate from 3 to 5 per cent was enacted last January 24th.

Nebraska

City Denied Review

THE United States Supreme Court on April 22nd denied the city of York a review of a decision by the eighth U. S. Circuit Court of Appeals which held that the Iowa-Nebraska Light & Power Company had a perpetual franchise and could not be ousted from the city. The city contended that the original franchise had been granted to the York Gas & Electric Light Company, which was a 50-year corporation, and that such franchise had expired.

The court found, however, that the franchise made the grant to the corporation, its successors, and assigns, thereby making it perpetual.

Loup Power Sent Omaha

POWER from the Loup River Public Power District's plant at Columbus was turned into the Nebraska Power Company's Omaha system on April 16th. Completion of the Loup's substation one and one-half miles south of the Omaha city limits and tests of equipment made previously were preliminary to the actual turning on of current.

The contract between the power company and Loup district calls for delivery by the

district of 5,000 kilowatts of power after July 1st. During a brief trial period, however, only a small amount of power will come into Omaha from the Loup plants. This will be increased as the operations between the two systems are coördinated.

By the terms of the mutual purchase agreement, Nebraska Power will take additional energy from the district as the needs of its customers increase and as such power can be supplied by the district. In addition, the power company's steam plant in Omaha is made available to the public power district during off-peak hours to protect its system against water shortage or other failures, it was said.

New York

CIO Loses Election

THE CIO has protested against the recent bargaining election held under NLRB auspices in New York city, in which Consolidated Edison employees voted almost 2 to 1 in favor of an independent union and against a CIO union. The CIO wants the NLRB at Washington to throw out the result on grounds of alleged bias in the handling of the election by the regional director.

In any event, the CIO takes the position that since it did manage to muster almost 10,000 votes it should be recognized as the representative for that group and continue organization within the Consolidated Edison system. It is likely, however, that the CIO would have claimed the right to exclusive bargaining recognition if it had obtained a majority vote. Labor observers are inclined to the belief that the NLRB will certify the election.

It thus seems that CIO has lost its first and perhaps decisive battle for bargaining supremacy in an important unit of the utility industry in the East. The victorious independent union has already made demands on the Consolidated Edison system for wage adjustments amounting to more than $2,000,000 a year. The CIO defeat was noted as a trend toward intraindustrial unionism in utility lines, independent of any national affiliation. (See p. 603.)

Ohio

City to Sue Gas Expert

LEGAL action in either the common pleas court or the court of appeals, to collect $87,958 from J. Paul Blundon, special engineer employed by the city in the long gas rate litigation, was authorized last month by the Columbus city council by unanimous vote. Whether City Attorney John L. Davies, who read a long written statement to the council defending Mr. Blundon, or someone else will bring the court action was not determined immediately by council. The city attorney indicated in his statement that he did not believe Mr. Blundon had overcharged the city.

Pending outcome of the court action to recover the money from Mr. Blundon, no steps were taken by the council to break the contract with Mr. Blundon under which the city attorney is permitted to hire him.

T. Blain Holloway, council's special investigator in the gas case, reported to council that Mr. Blundon had overcharged the city nearly $88,000 for services allegedly rendered by himself and his engineering aides in the gas case.

Oklahoma

Phillips Challenges Jurisdiction

GOVERNOR Phillips, again challenging the United States District Court's jurisdiction, last month filed in Tulsa Federal court his answer to the government suit to restrain him and others from interfering with construction of the Grand river dam.

The governor asked dismissal of a temporary restraining order granted at Vinita in Federal court after he sent National guardsmen to the PWA-financed dam in an effort to prevent its closing. The order later was continued to May 6th, when a hearing on a temporary injunction would be held in Tulsa.

In opposing continuance of the order, Randell S. Cobb, an assistant state attorney general, argued the U. S. District Court is not empowered in such instance to restrain a state court. Phillips had obtained a state court order restricting construction of the dam before the counter Federal order against him was granted. He sought settlement by PWA of an $889,275 state claim.

Pennsylvania

Drops Action to Bar Ruling

THE injunction proceedings started against the state public utility commission by John J. Lipko, Wilkes-Barre, and the Pennsylvania Utility Consumers Service, Inc., were withdrawn on April 19th, with the permission of President Judge Hargest, of the Dauphin County Court.

Lipko heads also the Public Ownership League. Both associations recently criticized the manner in which the commission handled the Pennsylvania Power & Light Company rate case, charging that in a shift of schedules, the rates were increased for a majority of consumers, instead of decreased.

George A. Curtis, secretary of the Public Ownership League, said the petition of the Consumers Service Company was withdrawn to permit the commission to go ahead with its investigation "so confusion between the two organizations can be cleared up."

PUC Hails Victory

THE Edison Light & Power Company of York spent more than $300,000 over a 4-year period to fight the state public utility commission's rate case which culminated in a $435,000 annual decrease in company revenue, the PUC said recently.

Of the money spent, $154,000 was paid in legal fees and expenses to nine different law firms which had a hand in the case ultimately won by the commission before the U. S. Supreme Court.

The high tribunal's decision established the commission's power to fix temporary rates, pending investigation to determine a permanent rate order, and was regarded by the commission as its greatest legal triumph since the present regulatory utility agency succeeded the old public service commission in 1937.

The company serves 31,500 consumers in York county.

South Carolina

Senate Favors Co-op Plan

THE state senate recently voted 25 to 12 in favor of a bill to order the Rural Electrification Authority to turn over its lines to county coöperatives. The measure went to the house.

The senate passed the rural electrification bill after rejecting an amendment by Quattlebaum of Horry to provide for elections by customers on authority lines before the lines could be transferred to coöperatives. Also tabled was an amendment by Abrams of Newberry to prohibit any transfer in any county in which the state rural electrification authority had a minimum of 200 miles of line.

Soon after debate started the senate rejected the motion of Pruitt of Anderson for a special committee of three senators to revamp the bill so that it would be acceptable to both sides.

Tennessee

Assails Municipal Plants

JO Frank Porter, of Columbia, chairman of the Tennessee Rural Electrification Authority, recently stated that the rural people are having somewhat the same difficulties with some of the municipally owned power plants that they encountered with the old power companies.

Porter's statement was made at a meeting of Federal and state agency representatives, called by Mrs. Amy Brown Miles of Memphis, state director, office of government agencies, for the purpose of discussing the various services and plans for coöperation in the state. Seventy-five representatives of these various agencies attended the meeting.

Elaborating upon his statement, Porter said that the municipally owned plants apparently do not want to reach out into the rural areas which are in need of the benefits from such service. He contrasted the attitude of the municipally owned plants with that of the telephone companies which recently announced plans for extension of their lines to rural areas. He said that the telephone companies were coöperating with farm bureaus in the movement, and expressed the belief that the power companies would have a better standing with consumers generally if they adopted a similar policy.

Porter excepted from the list of municipally owned power plants the Chattanooga Power Board, which he said was coöperating with the rural areas in an effort to provide adequate service.

Texas

Gas Bonds Voted

A REVENUE bond issue of $150,000 proposed for the erection of a municipal natural gas distribution system in Nacogdoches was approved in a spirited election last month. The vote favoring the bond issue was 369 to 201.

Next step in the move which began last summer to give Nacogdoches a city-owned gas plant will be to receive approval of the bonds and then offer them for sale. A. T. Mast, president of the Natural Gas Distributing Corporation with headquarters in Nacogdoches, proposes to sell the city gas from a field near Joaquin, 50 miles north of the city.

Elephant Butte Power in Texas

ELECTRIC power from the Elephant Butte dam in New Mexico is expected to be made available for distribution to the farms and homes in the Rio Grande project area and to the city of El Paso before the end of the year. This announcement was made by the Secretary of the Interior with the awarding of a contract to the Aluminum Company of America for the purchase of an aluminum conductor and accessories for the 62-mile transmission line from the Elephant Butte dam to Las Cruces, N. M.

The power plant at Elephant Butte dam will have a total installed capacity of 27,000 kilovolt-amperes consisting of three 9,000 KV-A units with an average annual salable output of 80,000,000 kilowatt hours at the power plant. On the basis of recommendations made by Secretary of the Interior Harold L. Ickes, that one-half of the energy be allocated to the state of New Mexico and one-half to the state of Texas, the Bureau of Reclamation has been proceeding with negotiations for the sale of the electric energy.

A contract for the purchase of the largest single block of power already has been executed with the El Paso Electric Company.

Utah

Power Unit Assists Budget

TO compensate for revenues lost in taxes paid by the Utah Power & Light Company, the Provo department of utilities will budget to divert approximately $7,500 into Provo city and school district coffers during the first year of operation, J. Hamilton Calder, utilities board chairman, reported recently.

Of this amount it is planned to transfer $4,000 to the city and $3,500 to the school district, Mr. Calder said. First, however, it would be necessary to determine the legality of diverting funds to the school district, he pointed out.

During 1939 the power company paid in taxes to Provo city $4,019.64 and to the school district $3,497.25, he reported. It was indicated that since the power company would pay taxes up to April 1st, the city probably would divert but three-fourths of $7,500 during the calendar year 1940.

Ruling Becomes Final

NO petition for rehearing having been presented in the required 20-day period, the recent decision of the state supreme court holding that a power coöperative financed by the Rural Electrification Administration is not subject to state control became final on April 17th.

Consequently, the state public service commission vacated its original order by which it assumed jurisdiction over the Garkane Power Company and the Moon Lake Electric Company, both REA coöperatives.

Wyoming

Rate Schedules Filed

THE state public service commission recently announced the filing of reduced rate schedules by the Mountain Power Company in 28 Wyoming communities, with reductions varying from approximately 11 to approximately 15½ per cent, estimated to produce total annual savings to ratepayers of $115,000 per year.

These reductions were obtained by the conference method. They followed other reductions from the same company during the past year of approximately $121,000, making total reductions of that company for the year of approximately $236,000, estimated on an annual basis.

Negotiations with other utilities looking towards reductions were reported to be in progress.

The Latest Utility Rulings

San Francisco Loses Hetch Hetchy Suit

THE United States Supreme Court, in an opinion by Justice Black (Justice McReynolds dissenting), held that San Francisco's contract with the Pacific Gas and Electric Company for distribution of hydroelectric power from the city's Hetch Hetchy project was in violation of the Federal Raker Act. The act, passed in 1913, gave the city the right to use certain national park and forest lands for the water supply and power project.

The law contained a provision forbidding the city to sell or let to any corporation or individual the right to sell or sublet the water or electric energy from the project. The city had argued that its arrangement with the company was merely an agency agreement. Justice Black said in part:

> To limit the prohibitions of § 6 of the act narrowly to sales of power for resale without more, as the city asks, would permit evasion and frustration of the purpose of the lawmakers. Congress clearly intended to require—as a condition of its grant—sale and distribution of Hetch Hetchy power exclusively by San Francisco and municipal agencies directly to consumers in the belief that consumers would thus be afforded power at cheap rates in competition with private power companies, particularly Pacific Gas and Electric Company. It is not the office of the courts to pass upon the justification for that belief or the efficacy of the measures chosen for putting it into effect. Selection of the emphatically expressed purpose embodied in this act was the appropriate business of the legislative body.
>
> The admitted facts shown by this record required the district court to find—as it did—that the city was violating § 6 in permitting sale and distribution of Hetch Hetchy power by the Pacific Gas and Electric Company. Now, as it has been doing since contracting with the city in 1925, the company sells and distributes that power. . . .

The opinion concluded that it was the intent of Congress to prevent Hetch Hetchy power from falling into the hands of a private utility distributor and to encourage San Francisco to engage in public distribution of such power in competition with private industry. *United States v. San Francisco.*

Sale of Stock to General Public Found to Be Necessary and Proper

A DECLARATION by West Penn Power Company, a registered holding company and also a subsidiary of a registered holding company, with respect to the issue and sale of first mortgage bonds and no par common stock was permitted by the Securities and Exchange Commission to become effective. The proceeds are to be used for improvements, additions, and betterments.

There was no doubt as to the need for the funds. New money could be raised by the issuance of first mortgage bonds, or preferred stock, or common stock, or by a combination of two or three of these methods.

The capitalization ratios showed a comparatively small common stock equity. This was further aggravated by the presence of "inflationary items in the property and investment accounts." Because of this, and in view of the ability to sell junior securities, the commission thought that a financing program envisaging the raising of all the new capital requirements through the sale of senior securities would fall short of the statutory requirements of § 7(d).

Under these circumstances as to the company's proposal to raise slightly more than half of its immediate capital requirements through the issuance of common stock, the commission made no adverse findings under § 7(d) of the Holding Company Act. The commission said in part:

> To the extent that funds needed for plant expansion are being raised by the sale of common stock, the purposes of Congress as set forth in the act are furthered, because: First, the increase of the common stock "cushion" is beneficial to the public interest and to the interests of the holders of the company's publicly held bonds and preferred stock, and, second, because the sale of stock rather than bonds, to procure $4,000,000, will aid in the "economical and efficient operation" of the company's business since it will avoid the rigidities resulting from adding to fixed charges interest on that sum, rigidities of a kind which, as the Interstate Commerce Commission has frequently noted, have contributed largely to the present serious plight of the railroads.

It seemed necessary to impose various conditions so as to put purchasers on notice of risks involved in the purchase of common stock. The commission mentioned the fact that the corporation had not set up a reserve for depreciation based on estimated life of physical property, but had adopted a policy of maintaining plant and property in a state of operating efficiency, charging to operating expenses the cost of ordinary current repairs, renewals, and alterations; but the company was making studies with reference to a depreciation policy in accordance with the uniform system of accounts. It was noted that changes in depreciation practice, as well as possible rate changes in pending proceedings before the Pennsylvania commission, might have some effect upon earnings.

The company had first filed an application for exemption of the security issues under § 6(b) of the Holding Company Act, but the commission held that it was unnecessary to decide whether the company was entitled to such exemption in view of its later declaration under § 7 of the act. The commission's staff had raised the question as to whether a registered holding company could qualify for such exemption. Commissioner Healy, in a separate opinion, maintained that the securities should be exempted by virtue of the third sentence of § 6(b) of the act. He said:

> I am unable to agree with the contention that a subsidiary of a registered holding company which is itself not a registered holding company is entitled to the exemption granted by the third sentence of § 6 (b), but that a subsidiary of a registered holding company which itself is a registered holding company is not so entitled. I believe that where the phrase "subsidiary company" is preceded by the adjective "any," that an exemption is thereby granted to any company which is a subsidiary of a registered holding company irrespective of whether such company is or is not itself a registered holding company.

Re West Penn Power Co. (File No. 32-196, Release No. 2009).

Free Competition in Field of Broadcasting

THE Supreme Court of the United States reversed a judgment of the court of appeals for the District of Columbia setting aside, as arbitrary and capricious, the action of the Federal Communications Commission in granting a permit for a radio station. Although the court recognized the right of a licensee to appeal from an order granting a license to a new station, it held that a license does not confer a property right protected from competition.

Resulting economic injury to a rival station is not, in and of itself and apart from considerations of public convenience, interest, or necessity, an element the Federal Communications Commission must weigh and as to which it must make findings in passing on an application for a broadcasting license, the court said. The court explained:

> In contradistinction to communication by telephone and telegraph, which the Communications Act recognizes as a common

carrier activity and regulates accordingly in analogy to the regulation of rail and other carriers by the Interstate Commerce Commission, the act recognizes that broadcasters are not common carriers and are not to be dealt with as such. Thus the act recognizes that the field of broadcasting is one of free competition. The sections dealing with broadcasting demonstrate that Congress has not, in its regulatory scheme, abandoned the principle of free competition, as it has done in the case of railroads, in respect of which regulation involves the suppression of wasteful practices due to competition, the regulation of rates and charges, and other measures which are unnecessary if free competition is to be permitted.

Federal Communications Commission v. Sanders Brothers Radio Station, 60 S Ct 693.

Sale of Interest in Gas Plant at Nominal Price Permitted So As to Save Service

MASSACHUSETTS Utilities Associates was authorized by the Securities and Exchange Commission to sell its interest in Gardner Gas, Fuel & Light Company for the nominal sum of one dollar. MUA was also to cancel an indebtedness owed by the utility company. After considering the value of the capital stock on the basis of the company's earning power, together with the liquidation value of the assets, the commission decided that the public interest required approval of the sale.

A maximum liquidation value of about $15,000 was indicated, but the amount of actual realization value of the assets was highly uncertain.

The commission stated:

> In any event, the adequacy of consideration for securities of a company being sold with the understanding that the operations of the company are to continue, cannot be determined solely upon the basis of the liquidation value of the company's assets; the continuous downward trend in operating revenues and the recurrent operating deficits of the company indicate that the securities of the company have no earning value.
>
> Further, the inadequacy of the consideration in light of the liquidation value of the company is not alone determinative of our approval; the effect of such liquidation upon the consumers must be considered. The result of the discontinuance of the company's operations would be to deprive some six hundred consumers of manufactured gas, and require their substituting bottled gas at a substantial installation cost and a higher rate, or to replace their gas appliances with electric appliances.

The purchaser was of the opinion that he could make a livelihood from the operations of the company, and there was some basis to conclude that he might be able to do so for some time. This would avoid a complete discontinuance of gas service, and the interest of consumers would be preserved at least for the immediate future. *Re New England Power Asso. (File No. 56-66, Release No. 1990).*

Transit Company Allowed Return on Prudent Investment

A RETURN of 8.16 per cent on intrastate operations of the Puget Sound Freight Line and its subsidiaries was held by the department of public service of Washington not to be unreasonable or unfair, in view of the competitive and hazardous nature of the boat freight transportation business. The commission applied the principles of a prudent investment rate base. After stating that courts have repeatedly held that regulatory bodies must consider factors of value in arriving at fair value for rate-making purposes, the commission continued:

> These include cost of reproduction new, per cent condition of property, cost of reproduction new less accrued depreciation,

historical or book cost, and estimated cost of construction. All of these factors have been considered by us in this case and we have come to the conclusion that the adjusted book cost, the actual investment of the respondent utilities, if prudently made, should be the controlling factors in calculating the fair value of these companies for rate-making purposes. This is fair and just to both the shipping public and to these carriers, and is within the principles of a prudent investment rate base.

The ton-mile basis for allocation of several items, although challenged by the company, was approved by the commission. Various breakdowns on both the ton and the ton-mile basis showed but slight difference in the results obtained. Dock operating expenses were allocated by segregating various items of expense and allocating them on the base of revenues, tons, traffic expense, and general expense.

Working capital and materials and supplies were allocated on a ton-mile basis, as were many other operating expenses, but operation loading and unloading expense was allocated on a ton-hauled basis, crew's wages partly on ton-hauled basis and partly on ton-mile basis, and other direct transportation expense generally on a ton-mile basis.

It was said that if the commission had found fair value to be cost of reproduction new less accrued depreciation, the straight-line method of depreciation would have been adopted. Since the commission followed the prudent investment principle, the undepreciated historical or book cost was used as the basis of fair value, with sinking-fund depreciation at an interest rate of 4 per cent.

The commission ruled that it had no jurisdiction over transportation rates on interstate commerce, and it allocated interstate and intrastate operations. No allocation was made, however, between the numerous routes, although there was disagreement as to whether the system should be considered as a whole. The commission said that in a previous decision concerning ferries on Puget Sound it had found that similar operations must be considered as a whole, and it was constrained to find that the various routes constituted one system. *Re Borderline Transportation Co. et al. (Cause No. 7121).*

Virginia and Delaware Not Contiguous States under Exemption Clause of Holding Company Act

An application by the Eastern Shore Public Service Company for exemption as a holding company, under § 3(a)(2) of the Holding Company Act, was denied by the Securities and Exchange Commission on the ground that the corporation is not predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized and states contiguous thereto. The commission pointed out that even if the applicant were predominantly a public utility company within the meaning of the act, it would not be entitled to an exemption for its operations would extend beyond the state in which it is organized and states contiguous thereto. The commission observed that Virginia and Delaware are separated at the nearest point by a strip of land approximately 30 to 35 miles in width.

The applicant is a Delaware corporation and owns and operates utility assets in that state. In addition it controls a number of utility companies in Maryland and Virginia. The commission said:

Even if we assumed that applicant and its subsidiaries formed a single operating unit, we would nevertheless be constrained to deny the application upon the ground that Delaware, the state in which applicant operates, is not, within the meaning of the act, "contiguous" to Virginia, the state in which one of its subsidiaries operates. An examination of the authorities reveals that "contiguous" has a primary meaning of actual contact, and a secondary meaning of near. In United States *v.* Hunter (USCCA 1936) 80 F(2d) 968, 969, the court stated:

"Etymologically and generally, contiguous means touching together, in contact with.

An examination of the cases collected in Words and Phrases shows that this meaning is generally applied by the courts, but a looser meaning has been given where the legislative or contractual intent so requires. The term 'foreign contiguous territory' has appeared in our immigration laws at least since 1882, Supp. Rev. Stats. Chap. 374, 8 USCA §§ 145, 216, and we are informed it has always been construed in the strict sense as referring only to Mexico and Canada."

Re Eastern Shore Public Service Co. (File No. 31-221, Release No. 1973).

Supreme Court Refuses to Review Illinois Gas Rate Case

THE United States Supreme Court dismissed, for lack of a substantial Federal question, an appeal from the supreme court of the state of Illinois in the Chicago gas rate case. The Illinois commission had denied a rate increase and this decision had been sustained by the state supreme court.

The Peoples Gas Light & Coke Company had requested authority to increase its rates by approximately 3 per cent to meet the burden of a state tax of 3 per cent imposed upon gross revenue of utility companies operating in the state. The company had applied for a rate increase approximately equivalent to the gross revenue tax on the ground that continuance of the old rate confiscated its property to the extent of $7,000 a day.

This increase was denied by the commission. On appeal the state circuit court found that the old rates were confiscatory and enjoined their continued enforcement, but the highest court of the state subsequently overruled the circuit court and affirmed the position of the commerce commission. *Peoples Gas Light & Coke Co. v. Hart et al. 60 S Ct 724.*

Contract for Street Lighting Must be For Reasonable Period

THE question whether a contract by a city with an electric company for street lighting covers a period of time which is so long as to make it unreasonable is held by the supreme court of Washington to be a question properly presented to the court for decision. Whether assertions that the contract will run for too long a time or whether the city officials have a valid and sufficient reason for entering into such a contract despite pending opportunities to obtain electricity from public power developments the court did not determine, but, in reversing a lower court judgment dismissing an action to contest the validity of such a contract, the court held that this was a triable issue which should be met instead of being disposed of by demurrer.

The Pacific Power & Light Company had furnished service for several years in the city of Yakima. After its franchise expired a renewal had been rejected by the voters for their approval. Since then the company has been operating without a franchise. The city officials adopted a resolution to contract for street-lighting service during a period of ten years, giving the company the right to construct an overhead system for that purpose. Taxpayers attacking the contract urged that the city in the past had always been able to obtain street-lighting service without entering into a long-term contract and that with the completion of projects on the Columbia river at Bonneville and Coulee by the United States government cheap electrical power would be obtainable.

Aside from the question of reasonable duration of the contract, questions were

presented as to the validity of the contract based upon the question whether it was a franchise for use of the streets and a contract which must be advertised. The court refused to sustain objections on these grounds. The court was of the opinion that a contract made with a municipality for the sale and delivery to it of light or power is not a franchise even though there is an implied grant of such use of the city streets as may necessarily be involved in the performance of the contract.

Although the court agreed that a street-lighting contract of the kind involved constitutes a "purchase of property or material" within the meaning of statutory provisions as to competitive bidding, the court held that the formality of calling for bids under the circumstances would have been a useless and futile thing, for there was no one else who could have submitted a bid at the time.

It was said that a statute requiring municipal contracts to be awarded on competitive bidding does not apply where the contract is for the supply of a public utility to be furnished by a person having a monopoly. *Washington Fruit & Produce Co. et al. v. City of Yakima et al. 100 P(2d) 8.*

Other Important Rulings

CIRCUIT Judge George Thompson of St. Croix county, Wisconsin, held that the Rural Electrification Act does not prohibit any REA borrower from selling power to one to whom service from another source is merely available and who is not actually buying energy from such other source. It had been contended that authorization to loan Federal funds to coöperatives and other agencies "for the purpose of furnishing electric energy to persons in rural areas who are not receiving central station service" operates as a direct prohibition against REA borrowers, making it illegal for them to serve to anyone from whom service may be available from a private power company. *Wisconsin Hydro Electric Co. v. St. Croix County Electric Coöperative.*

The New York commission denied a petition by a transportation company for consent to acquire securities of a bus company whose stock was admittedly without value. It was suggested that a petition might be filed for consent to transfer of the franchises, works, and systems to the transit corporation upon a consideration commensurate with the value of the property; or the transit corporation might, after demand, prosecute to judgment notes of the bus company which it held, and upon execution bid in the assets. *Re Rochester Transit Corp.*

Where a railroad company sued to annul a commission order granting operating authority to a motor carrier and the court dismissed the suit because during its pendency the commission had rescinded its grant of authority, the Nevada Supreme Court held that the motor carrier had no right to appeal from the judgment of the court, since it was the action of the commission in rescinding its order rather than an action by the court which was detrimental to the interests of the motor carrier. *Nevada-California Transportation Co. v. Tonopah & Goldfield Railroad Co. 97 P(2d) 433.*

The supreme court of Arizona held that the commission cannot authorize the discontinuance of utility service if it appears that upon the whole the loss of revenue to the company by a continuance of operation is less than would be the loss and inconvenience to the public by its cessation. *Corporation Commission v. Southern P. Co. 99P (2d) 702.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Titles and Index

TITLES

INDEX

Re International Utilities Corporation

[File Nos. 51–28, 51–37, Release No. 1924.]

Dividends, § 6 — Disapproval of payment — Holding company.

An application by a registered holding company, pursuant to § 12(c) of the Holding Company Act, 15 USCA, § 79*l* and Rule U–12C–2 adopted thereunder, for approval of the declaration and payment out of capital or unearned surplus of a dividend on junior preferred stock, should be denied when income from a foreign subsidiary is jeopardized by foreign exchange restrictions, the dividend would of necessity be made out of future income, and such payment would tend to jeopardize the position of holders of prior preferred stock and deprive them of a part of the protection to which they are entitled.

[February 9, 1940.]

APPLICATION *for authority to declare and pay dividend on junior preferred stock; denied.*

APPEARANCES: Lewis N. Evans, of the Public Utilities Division of the Commission; Humes, Buck, Smith & Stowell, by Ralph P. Buell, for International Utilities Corporation.

By the COMMISSION: International Utilities Corporation ("International"), a Maryland corporation and a registered holding company, has filed applications pursuant to § 12 (c) of the Public Utility Holding Company Act of 1935, 15 USCA, § 79*l* and Rule U–12C–2 adopted thereunder, for approval of the declaration and payment out of capital or unearned surplus of a regular quarterly dividend at the rate of 87½ cents per share on the $3.50 prior preferred stock, payable February 1, 1940, and for approval of the payment of 43¾ cents per share on the $1.75 preferred stock on account of accumulated unpaid dividends aggregating $9.625 per share as of November 30, 1939. For purposes of the record, the two matters have been consolidated.

On January 30, 1940, we entered an order approving,[1] subject to certain conditions, the payment of the dividend on the $3.50 prior preferred stock and reserving jurisdiction as to our approval of the proposed payment on the $1.75 preferred stock. Jurisdiction was reserved in order that additional evidence might be offered with respect to the proposed payment. This has been done and a full record is now before us.

Net Asset Coverage

The $1.75 preferred stock, of which there are 66,652.56 shares outstand-

[1] In Re International Utilities Corp. File Nos. 51–28, 51–37, Holding Company Act Release No. 1910, Henderson, Commissioner, dissenting.

ing, is junior to the $3.50 prior preferred stock, of which there are 98,969.95 shares outstanding. In our previous findings we discussed the net assets of International as stated on that company's books and their relation to the liquidating values of these preferred stocks and stated that these two stocks have a book net asset coverage of $5,397,286.54 in excess of their liquidating values. We are, however, reluctant to accept these book figures as the measure of the protective equity behind the preferred stock. International's investments are principally in equity securities. Approximately two-thirds of International's net assets are represented by its holdings, consisting mainly of common and preferred stocks, in two intermediate holding companies, Dominion Gas and Electric Company ("Dominion") and General Water Gas & Electric Company ("General").[2] Of these the former has a substantial amount of publicly held funded debt, and the latter has both bonds and preferred stock outstanding in the hands of the public. In turn, the assets of both Dominion and General consist principally of equity securities of operating subsidiaries, many of which also have funded debt outstanding and held outside of the system.

Effect of Proposed Reorganization

On previous occasions we have stressed the fact that International is in need of a thorough reorganization which would readjust the relative rights and voting power of the various classes of stock to positions reflecting their present equities in the corporation and in accordance with the corporation's earning power. Such a reorganization would place the company in a position where it would no longer be necessary to pay dividends out of capital surplus. We have now learned that International's board of directors has by resolution authorized the preparation and submission to this Commission of a plan of reorganization or corporate simplification. We have no knowledge as to the character of the proposed plan and nothing herein is to be taken as an expression of opinion with respect to such a plan.

It is obvious, however, that a comprehensive valuation of International's assets would be a condition precedent to the formulation of a plan, and the record shows that a review of the assets is now being made. Until such a valuation has been completed and the results thereof made available to the Commission, any calculation, based on asset values as contrasted with book values, of the liquidating position of International's securities would be inconclusive.

Earnings of International

Previous payments of dividends[3] were sanctioned because, among other things, it appeared that International's current income was in excess of such payments. It is our opinion that total dividend payments since December 31, 1938, as of which date the earned surplus deficit first appeared in International's accounts, should be kept within the limits of current income not

[2] 99.9 per cent of the voting securities of Dominion, a Delaware corporation, and 75.9 per cent of General, also a Delaware corporation, are owned by International.

[3] In Re International Utilities Corp. (1939) File No. 51–20, Holding Company Act Releases Nos. 1643, 1753. Henderson, Commissioner, dissenting.

only during a particular fiscal period but for the entire period within which dividends are paid out of capital surplus. The record shows that the management of International agrees with this fundamental position. It follows, therefore, that dividends on the $1.75 preferred stock, or junior preferred, should be so limited as to leave a balance of current earnings, which, in the event that present estimates of future earnings should prove overoptimistic, would be available for distribution to the $3.50 prior preferred stock. No dividend payment can be permitted if it will in any manner tend to jeopardize the rights of the senior preferred stock.

International's position with respect to accumulated earnings is far from satisfactory. Its earnings for the year 1939 were only $37,731.98 in excess of dividends paid during the same period. Since the record indicates that International has not received any appreciable income so far in 1940 and will not receive any until March or April, it becomes necessary to draw on anticipated future earnings to the extent of $48,865.90 in order to have sufficient earnings to cover the dividend on the $3.50 prior preferred stock, the payment of which we have approved. If, the payment on the $1.75 preferred stock were approved, the amount by which future earnings are anticipated is increased to $78,026.15.

International estimates that its net earnings for the year 1940 will be somewhat in excess of its 1939 earnings and will amount to $517,958. $276,164 or 40.2 per cent of the estimated gross income is expected to come from Dominion,[4] and $229,430 or 33.4 per cent from General. In view of the very nature of International's holdings in these two companies which we have previously discussed, it is apparent that any dislocation in the flow of income from the operating subsidiaries to the subholding companies will have an immediate and serious effect on the earnings of International.

Effect of Canadian Exchange Restriction

In the case of Dominion there is one unusual factor present which must be considered with regard to its possible effect on that company's earnings. Dominion's operating subsidiaries, from which it derives all of its revenues, are Canadian corporations and are all located in the Dominion of Canada. The Canadian government by order in council under authority of the War Measures Act has established the Foreign Exchange Control Board of Canada, which body has promulgated regulations[5] with respect to foreign exchange. The avowed object of these regulations is to conserve foreign exchange.

Some of these apply specifically to the payment of interest or dividends by Canadian corporations to nonresidents. Any payment of interest, except on securities issued and offered for public subscription, or any dividend payment can be made only with the approval of the Foreign Exchange

[4] Includes $4,872 to be received directly from Northwestern Utilities Ltd., a subsidiary of Dominion.

[5] The regulations of the Foreign Exchange Control Board are published from time to time, as promulgated, in "The Canada Gazette," published at Ottawa.

Control Board, after application made thirty days in advance. Such payments can be made only out of current earnings as the same are defined and computed by the Board. In addition, Canadian currency can only be converted into American dollars at a discount, which presently is approximately 10 per cent.

The effect of this situation upon Dominion is obvious. The exchange discount will in the future reduce its income by that amount. While, according to the record, no difficulties have so far been encountered in transferring funds and the management of International regards the possibility of a diminution or stoppage of Dominion's income because of exchange restrictions as remote, we nevertheless regard these restrictions as a present potential impediment to the undiminished flow of income from the Canadian subsidiaries to Dominion and ultimately to International.

Conclusions

In view of the several uncertainties, discussed herein, confronting International, in view of the fact that the proposed dividend payment on the $1.75 preferred stock would of necessity be made out of anticipated future income, and in view of the fact that such a payment would tend to jeopardize the position of the holders of $3.50 prior preferred stock and deprive them of a part of the protection to which they are entitled, it is our opinion that the proposed payment of 43¾ cents per share on the $1.75 preferred stock is unwarranted and should not be approved. The application will be denied.

An appropriate order will issue.

By the Commission, Henderson, Commissioner, being absent and not participating herein.

SECURITIES AND EXCHANGE COMMISSION

Re Southeastern Electric & Gas Company

[File No. 67-6, Release No. 1955.]

Intercorporate relations, § 19 — Loan to subsidiary — Payment on guaranteed note.

A registered holding company was permitted, pursuant to Rule U-12B-1, promulgated under § 12 of the Holding Company Act, 15 USCA, § 79*l*, to advance to a subsidiary, on open account, funds required, together with other current funds, to pay interest on a note held by a bank and guaranteed by the registered holding company, where earnings of the subsidiary were insufficient to meet the payment.

[February 29, 1940.]

RE SOUTHEASTERN ELECTRIC & GAS CO.

DECLARATION pursuant to Rule U–12B–1 under § 12 of the Public Utility Holding Company Act of 1935 in regard to advance on open account by a registered holding company to a subsidiary; declaration permitted to become effective.

APPEARANCES: Herbert D. Miller, of the Public Utilities Division of the Commission; Travis, Brownback & Paxson, by Francis J. Sypher, for Southeastern Electric and Gas Company.

By the COMMISSION: Southeastern Electric and Gas Company,[1] a registered holding company, has filed a declaration pursuant to Rule U–12B–1 promulgated under § 12 of the Public Utility Holding Company Act of 1935, 15 USCA, § 79*l*. The declaration is in regard to an advance on open account by Southeastern Electric and Gas Company of $53,500 to Eastern Power Company, a registered holding company subsidiary of the declarant. The advance, on which no interest is to be paid, together with other current funds, is to be used by Eastern Power Company for the purpose of paying interest due March 1, 1940, amounting to $83,750 on a 5 per cent collateral note payable to the Chase National Bank of the city of New York, due September 1, 1945. The principal amount of said note is $3,350,000 and is guaranteed as to principal and interest by declarant.

After appropriate notice a public hearing was duly held. The Commission, on having examined the record, makes the following findings:

Southeastern Electric and Gas Company is the owner of all the outstanding securities of Eastern Power Company, other than the note payable to the Chase National Bank. Eastern Power Company was incorporated in Delaware in July, 1935, by Associated Gas and Electric interests for the purpose of acquiring the ownership through purchase of the common stocks of Eastern Shore Public Service Company and Virginia Public Service Company from the Chase National Bank. In acquiring these securities, Eastern Power Company issued the 5 per cent note previously referred to. The stock so acquired was pledged by Eastern Power Company as collateral security for the note. In addition, Southeastern Electric and Gas Company pledged as collateral security for its endorsement and guaranty of the note $3,034,000 principal amount of Broad River Power Company first and refunding 5 per cent bonds of 1954 (now South Carolina Electric & Gas Company) and $1,000,000 principal amount of Lexington Water Power Company first mortgage 5 per cent bonds of 1968.[2] The issuers of both these securities

[1] Southeastern Electric and Gas Company is a subsidiary of General Gas and Electric Company, which in turn is a subsidiary of Associated Gas and Electric Corporation, which in turn is a subsidiary of Associated Gas and Electric Company, all registered holding companies.

[2] All but $34,000 of the Broad River Power Company bonds and all of the Lexington Water Power Company bonds are owned by the Southeastern Investing Corporation, a wholly owned subsidiary of Southeastern Electric and Gas Company. These bonds were pledged by Southeastern Electric and Gas Company and subsequently sold to Southeastern Investing Corporation subject to the pledge agreement.

are subsidiaries of Southeastern Electric and Gas Company.

Eastern Power Company's only source of income is from dividends on the common stock of its two subsidiaries. Due to dividend restrictions, Virginia Public Service Company cannot pay dividends.[3] For the twelve months' period ended December 31, 1939, Eastern Shore Public Service Company paid common stock dividends to Eastern Power Company in the amount of $56,420. The annual interest requirement on Eastern Power Company's note is $167,500, and the payment due March 1, 1940 is $83,750. Declarant stated that during 1940 to date Eastern Power Company's only cash receipt was a $30,333 dividend from Eastern Shore Public Service Company. This amount, with the $53,500 to be borrowed from Southeastern Electric and Gas Company, will be used to pay the interest of $83,750.

In view of the earnings prospects of Eastern Power Company, it would seem that the declarant might be called on repeatedly to make advances similar to that proposed here, and since the declarant has guaranteed the principal of and interest on the Chase note, this would lead to wholly unsatisfactory intercorporate complications. Declarant recognizes this situation and has decided to merge Eastern Power Company into itself. The necessary application to effect such merger has been filed with the Commission. No consideration has as yet been given to this application.

Pursuant to paragraph (d) of Rule U–12B–1, we find that the proposed advance of cash on open account is in the interest of investors and does not adversely affect the public interest or the interest of consumers, and is not in circumvention of any provisions of the act, or rule or order of the Commission thereunder. Accordingly, our order permitting the declaration to become effective will issue, subject, however, to the condition that the transaction set forth in the declaration, as amended, be carried out in all respects in accordance with and for the purposes represented by said amended declaration.

By the Commission, Commissioner Henderson being absent.

ORDER

Southeastern Electric and Gas Company, a registered holding company, having filed a declaration, and amendments thereto, pursuant to Rule U–12B–1 promulgated under § 12 (b) of the Public Utility Holding Company Act of 1935 regarding an open account advance of $53,500 to Eastern Power Company, a registered holding company subsidiary of declarant;

A public hearing having been duly held after appropriate notice; the record in this matter having been examined; and the Commission having made its findings herein;

It is *ordered* that such declaration be, and the same is, hereby permitted to become effective, subject, however, to the condition that the transaction set forth in the declaration, as amend-

[3] The board of directors has declared no dividends since October 31, 1938, and an order of this Commission approving the acquisition of securities (Release No. 1888) restrains the payment of dividends without the approval of this Commission.

ed, be carried out in all respects in accordance with and for the purposes represented by said amended declaration.

SECURITIES AND EXCHANGE COMMISSION

Re Washington Gas Light Company

[File No. 31-218, Release No. 1964.]

Intercorporate relations, § 19.23 — Holding company exemption — Predominantly a public utility company.

1. Among the important facts to be considered in determining whether a holding company is entitled to exemption from the Holding Company Act under § 3(a) (2), 15 USCA, § 79c, is the relative size of the subsidiaries and their business as compared with that of the applicant itself, p. 265.

Intercorporate relations, § 19.23 — Holding company exemption — Predominantly a public utility company — Relative revenues and assets.

2. A gas company organized and operating in the District of Columbia, owning all of the outstanding securities of subsidiary companies which are organized and operating in contiguous territory in the states of Maryland and Virginia, may be entitled to exemption under § 3(a) (2) of the Holding Company Act as a company predominantly a public utility whose operations as such do not extend beyond the state in which it is organized and states contiguous thereto, even though assets, income, sales, and revenues of the subsidiaries amount to more than 10 per cent of the comparable items of the holding company, p. 266.

[February 29, 1940.]

APPLICATION *for exemption as a holding company from provisions of Public Utility Holding Company Act of 1935 under § 3(a) (2); granted.*

APPEARANCES: J. Butler Walsh and Robert F. Krause, for the Public Utilities Division of the Securities and Exchange Commission; C. Oscar Berry, for Washington Gas Light Company.

By the COMMISSION: Washington Gas Light Company has filed an application for exemption as a holding company from the provisions of the Public Utility Holding Company Act of 1935 under § 3 (a) (2) of that act (15 USCA, § 79c).[1] After appropriate public notice a hearing was held on this application at which no member of the public requested to be heard. Having considered the record

[1] Washington Gas Light Company was joined in the original application in this matter by its subsidiary, the Georgetown Gas & Light Company, which sought a similar exemption because of the ownership by the latter company of all of the voting stock of Georgetown Gas Light Company of Montgomery county, Maryland. In December, 1936, the

in this matter the Commission makes the findings contained herein.

Section 3 (a) (2) of the Public Utility Holding Company Act of 1935 (hereinafter sometimes referred to as the "act") provides as follows:

"The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except in so far as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

. . .

"(2) such holding company is predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized and states contiguous thereto;"

Washington Gas Light Company (hereinafter sometimes referred to as the "applicant") is a corporation which was organized in the District of Columbia in 1848 under a special act of Congress. The principal place of business of the applicant is in Washington, D. C. The applicant and its subsidiary companies manufacture gas and distribute a mixture of manufactured and natural gas within the metropolitan area of Washington, comprising the District of Columbia and contiguous territory in the states of Maryland and Virginia. The applicant is presently not a subsidiary of any other company.[2] The applicant has the following subsidiary companies and is a holding company as defined by § 2 (a) (7) of the act (15 USCA, § 79b) because of its ownership of more than 10 per cent of the outstanding voting securities[3] of the first four companies which carry on operations as gas utility companies: Washington Gas Light Company of Montgomery County, Maryland; Rosslyn Gas Company; Washington Suburban Gas Company; Alexandria Gas Company; Prince George's Gas Corporation.

Washington Gas Light Company of Montgomery county, Maryland, is a Maryland corporation which distributes and sells mixed gas in parts of Montgomery and Prince George's counties, Maryland, in territory contiguous to the District of Columbia which is supplied by the applicant, Washington Gas Light Company. All of the gas sold by this subsidiary is purchased from the applicant.

Rosslyn Gas Company is a Virginia corporation which distributes and

Georgetown Gas Light Company was merged with Washington Gas Light Company and Georgetown Gas Light Company of Montgomery county, Maryland, was merged with Washington Gas Light Company of Montgomery county, Maryland.

[2] At the date of filing of the original application herein approximately 77 per cent of the voting securities of the applicant was owned by Washington and Suburban Companies, a registered holding company. In 1939 such securities of the applicant held by Washington and Suburban Companies, together with an additional 35,000 shares of common stock of the applicant which were acquired by Washington and Suburban Companies in consideration for the sale by it of the securities and debt of Alexandria Gas Company and Washington Suburban Gas Company to the applicant, were sold to underwriters for distribution to the public generally. For further details with respect to this transaction, see Re Washington Gas Light Co. and Washington and Suburban Companies (1939) Holding Company Act Release No. 1670.

[3] Applicant owns all of the outstanding voting securities of its five subsidiaries with the exception of Washington Gas Light Company of Montgomery county, Maryland, of which it owns 99.9 per cent or all of the voting securities with the exception of one share of common stock which is held by a former officer of the company and which the applicant has been unable to purchase.

sells mixed gas in parts of Arlington and Fairfax counties, Virginia, in a territory which is adjacent to the District of Columbia. All of the gas sold by this subsidiary is purchased from the applicant.

Washington Suburban Gas Company is a Maryland corporation which supplies the city of Hyattsville, Maryland, and vicinity with mixed gas. The territory supplied is also contiguous to the District of Columbia. This subsidiary produces its own manufactured gas and buys its requirements of natural gas from the applicant.

Alexandria Gas Company is a Virginia corporation which supplies the city of Alexandria, Virginia, with gas. The territory supplied is adjacent to the District of Columbia. This subsidiary has its own gas plant which supplies a portion of its requirements, the remainder being supplied by applicant through the lines of Rosslyn Gas Company.

Prince George's Gas Corporation is a Maryland corporation which operates a gas storage and compressor station located at Chillum, Prince George's county, Maryland, which station is an integral part of the storage and distribution system of the applicant. No effort is made to operate this subsidiary at a profit and all of its charges and expenses are borne by the applicant.

All of the subsidiaries of applicant are incorporated in the state in which they conduct their operations. Applicant and its subsidiaries operate substantially as a single unit in metropolitan Washington which is comprised of the District of Columbia and adjacent territory in Maryland and Virginia. The executive officers of the applicant, in general, hold similar positions in each of its subsidiaries. All of the applicant's directors are also directors of each of its subsidiaries.

No securities of applicant's subsidiary companies are outstanding in the hands of the public[4] and the capital requirements of such subsidiary companies have been provided for by the parent company. It is stated to be the policy of the applicant to continue to supply such capital requirements.

Before the applicant can be granted an exemption, we must find that it is predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized and the states contiguous thereto. Although the applicant is incorporated in the District of Columbia and its operations as a public utility company do not extend beyond the "state"[5] in which it is organized and states contiguous thereto, the question remains as to whether applicant is "predominantly a public utility company."

[1] The act itself sets out no specific test or standard for the interpretation of the word "predominantly." We have, however, in several recent decisions,[6] been called upon to apply the tests and standards intended by § 3

[4] As noted in footnote 3, *supra*, one share of the common stock of Washington Gas Light Company of Montgomery county, Maryland, is held outside the system.

[5] Section 2(a) (24) of the act defines "state" to mean any state of the United States or the District of Columbia.

[6] See Re Eastern Minnesota Power Corp. (1939) Holding Company Act Release No. 1504 (28 PUR(NS) 196); Re Union Electric Co. of Missouri (1939) Holding Company Act Release No. 1621 (31 PUR(NS) 13); Re Monongahela West Penn Pub. Service Co. (1939) Holding Company Act Release No. 1706; Re West Penn Power Co. (1939) Holding Company Act Release No. 1779 (32 PUR

(a) (2) of the act. In view of the extended consideration given to the interpretation of the section in those decisions, further discussion would appear to be unnecessary. Those decisions indicate that among the important facts to be considered is the relative size of the subsidiaries and their business as compared with that of the applicant itself.

[2] Comparative statistics of the applicant and its subsidiaries[7] of the type which we have examined in previous similar cases may be summarized as follows:

	Applicant	Utility Subsidiaries	Per Cent (Subsidiaries to Applicant)
Gross operating revenues (eliminating intercompany sales)	$ 7,472,407	$1,773,227	23.73
Gross fixed utility assets	32,730,533	5,960,680	18.21
Net fixed utility assets	31,129,240	5,425,318	17.43
Investments in and advances to utility subsidiaries	5,496,846	.....	15.40*
Net operating income	1,797,741	294,758	16.40
Gas sold—M cu. ft. (excluding sales to subsidiaries)	10,267,477	1,841,855	17.94

* This percentage represents the proportion which applicant's investment in utility subsidiaries bears to the total of the applicant's gross fixed utility assets and current assets.

We have had occasion to grant exemption under § 3 (a) (2) at various times, but in most of the cases where exemptions were granted the percentage of gross operating revenues of the subsidiaries of the respective applicants did not exceed 10 per cent. However, there is nothing in such decisions to indicate that 10 per cent should fix the upper level. In one case, Re Rockland Light & Power Co. (1936) 1 SEC 354, an exemption was granted under this section where the sales at retail by the subsidiary companies approximated 19 per cent of the consolidated gross operating revenue of the entire system.[8] It will be noted from the foregoing comparative statistics with respect to applicant and its subsidiaries that the percentages obtained are on the whole greater than 10 per cent. However, an examination of the cases in which we have recently denied applications under this section will indicate that the percentages obtained in similar comparative statistics therein are substantially higher than those obtained in the instant proceeding. It will also be noted that in the instant case all of the outstanding securities of the applicant's subsidiary companies are owned by the parent. This was likewise true in the system under consideration in the Rockland Light & Power Company Case, *supra*.

In light of all of the foregoing considerations and facts, we find that the applicant is predominantly a public utility company whose operations as a public utility company do not extend

(NS) 47); Re Potomac Edison Co. (1939) Holding Company Act Release No. 1789 (32 PUR(NS) 56).

[7] All figures are for twelve months ended December 31, 1939, including for such period Alexandria Gas Company and Washington Suburban Gas Company, which companies did not actually become subsidiaries of applicant until August 8, 1939.

[8] In the instant case the gas operating revenues of the subsidiaries (eliminating intercompany sales) are 19.18 per cent of the consolidated gas operating revenues of the applicant and its subsidiaries (assuming Alexandria Gas Company and Washington Suburban Gas Company were subsidiaries of applicant throughout 1939).

beyond the state in which it is organized and states contiguous thereto.

Section 3 (a) *supra* of the act directs us to grant an exemption from any provision or provisions of the act to a company falling within one or more of the classes therein described "unless and except in so far as it (the Commission) finds the exemption detrimental to the public interest or the interest of investors or consumers." The record discloses no formal or informal arrangements or agreements or course of conduct detrimental to the public interest or that of investors or consumers. Applicant does perform accounting, engineering, and legal services for its subsidiary companies, and, with certain minor exceptions, the construction and maintenance work for the subsidiaries is done by the personnel of the parent company. Charges for all such services are at cost. We are of the opinion that there is nothing in such transactions between applicant and its subsidiary companies which makes it necessary for us to make findings that the exemption herein granted would be detrimental to the public interest or that of investors or consumers. As securities of the applicant are registered on National Securities Exchanges information concerning the affairs of the applicant comparable to that obtained through registration under the Public Utility Holding Company Act is available to the public.

Of course, the fact that applicant is not obliged to register as a holding company will not relieve it and its subsidiary companies from any obligations imposed upon them in any other capacity, such as that of an "affiliate" or a "person" as defined in the act. The provisions of the act are sufficient to authorize the Commission to revoke or amend the order of exemption in the event it finds that the circumstances which gave rise to its issuance no longer exist.

The foregoing considerations lead us to the conclusion that it is unnecessary for us to find that the exemption herein granted would be detrimental to the public interest or that of investors or consumers. The order of the Commission will exempt the applicant from all provisions of the act that would require its registration thereunder because of its control over its subsidiary public utility companies, Washington Gas Light Company of Montgomery county, Maryland, Rosslyn Gas Company, Washington Suburban Gas Company, and Alexandria Gas Company.

An appropriate order will issue.

By the Commission, Commissioner Henderson being absent and not participating herein.

ORDER

Washington Gas Light Company having made application for exemption from the provisions of the Public Utility Holding Company Act of 1935 pursuant to § 3 (a) (2) thereof; a hearing having been held on said application after appropriate notice; the record in this matter having been duly considered and the Commission having made appropriate findings of fact;

It is *ordered* that Washington Gas Light Company *supra* be and it hereby is exempted from all those provisions of the Public Utility Holding Company Act of 1935 which require it to register under said act because

it owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of Washington Gas Light Company of Montgomery county, Maryland, Rosslyn Gas Company, Washington Suburban Gas Company, and Alexandria Gas Company.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Public Utility Commission

v.

John J. Lipko et al.

[Complaint Docket No. 12804.]

Commissions, § 41 — Jurisdiction — Persons not public utilities.

1. The fact that persons are not public utilities is not determinative of Commission jurisdiction to investigate their statements and activities relating to a proceeding pending before the Commission, p. 270.

Commissions, § 43 — Power to investigate — Actions of parties.

2. The Commission has power to investigate any material peculiarities in words or actions, of parties to proceedings before the Commission, which indicate a lack of good faith or an improper motive in the institution and conduct of such proceedings p. 270.

Commissions, § 36 — Powers — Conduct of parties — Rules and regulations.

3. The Commission has power to regulate the conduct, not only of attorneys, but also of parties, in proceedings before it, and the absence of specific rules and regulations does not preclude the Commission from exercising that power, p. 270.

Commissions, § 36 — Investigation powers — Proceedings — Activities of persons not parties.

4. The general power of the Commission to conduct hearings other than those specifically provided by the Public Utility Law may be exercised to inquire into the activities of any person or corporation which appear calculated to cheat public utility consumers of full benefit of the reparation provisions of the Public Utility Law, entrusted to the Commission for administration; and such power is properly invoked where a rate organization appears to have represented falsely that it could assist the public or the Commission in securing rate reductions and refunds, p. 275.

Reparation, § 11 — Duties of Commission — Advice to public — Refund claims — Collection fees.

5. The Commission may not rest quiescent and permit a proceeding pending before it to be used for the collection of money by those not morally entitled thereto; and its duty is to advise the public that if reparations are due to consumers the Commission will order them paid in accordance with

law, and that it is not necessary for any consumer to divide with anyone else that which is legally due him, p. 276.

Rates, § 1 — Activities of rate organization — Erroneous and misleading statements.

Discussion of erroneous and misleading statements by a rate organization and its president with respect to prosecution of a rate proceeding and the securing of refunds for consumers, p. 271.

[March 7, 1940.]

INVESTIGATION *upon Commission motion to ascertain character of activities and statements by an individual and a rate organization so far as they relate to regulation of public utilities; jurisdiction asserted.*

By the COMMISSION: This matter is an investigation upon Commission motion for the purpose of ascertaining the character of the activities and statements of John J. Lipko and Pennsylvania Utility Consumers Service, Inc., in so far as such activities and statements relate to the regulation of public utilities in the commonwealth of Pennsylvania.

Respondents filed a motion to dismiss on the ground that the Commission lacked jurisdiction and, at the hearing held on October 31, 1939, counsel for respondents appeared specially and again moved to dismiss for lack of jurisdiction. Action on these motions was deferred, and testimony was taken for the sole purpose of placing of record such facts as would aid the Commission in determining the question of jurisdiction. During the noon recess, a petition was presented by respondents to the Dauphin county court for an injunction, which the court declined to grant until the Commission had first determined the question of jurisdiction. Briefs have been filed by respondents and the matter is now before us for determination of jurisdiction. The following facts appear from the record:

John J. Lipko is president, a stockholder, and one of the incorporators of Pennsylvania Utility Consumers Service, Inc. On May 7, 1935, Lipko and Pennsylvania Public Ownership League, an association of which Lipko was then executive director, filed with our predecessor, the Public Service Commission, a complaint alleging that the rates charged by Pennsylvania Power and Light Company for its electric service were excessive. This proceeding is captioned "John J. Lipko, director of Pennsylvania Public Ownership League, et al. v. Pennsylvania Power and Light Company" and is docketed to our Complaint Docket No. 10731.

Pennsylvania Utility Consumers Service, Inc., is a Pennsylvania corporation, chartered May 3, 1939, under the provisions of the Business Corporation Law, for the stated purpose of "aiding consumers in securing reductions in public utility rates and refunds from public utility companies." Under Lipko's active direction

it has entered into agreements with numerous consumers in Pennsylvania Power and Light Company's territory whereby, in consideration of the agreement of Pennsylvania Utility Consumers Service, Inc., to use its best efforts to secure reduction of utility rates, and to undertake the handling of complaints and the enforcement and collection of reparations from Pennsylvania Power and Light Company, the consumer employs and retains the corporation to represent him, and further agrees to pay the corporation an amount equal to 2 per cent of his annual electric bill and, in addition, to pay the corporation 20 per cent of any overpayments or refunds secured by the corporation or received by the consumer from Pennsylvania Power and Light Company.

[1–3] Respondents in their briefs point out that they are not public utilities, and it is contended for that reason that their statements and activities cannot be investigated by this Commission. Apparently respondents are not public utilities, but this is not determinative of our jurisdiction herein. We start with the plain proposition that the instant proceeding does not concern itself with the statements and activities of Lipko and Pennsylvania Utility Consumers Service, Inc., generally, but only in so far as such statements and activities relate to a proceeding now pending before the Commission, namely, the proceeding at Complaint No. 10731. We are not at all doubtful of our right to investigate any material peculiarities in words or actions of parties to proceedings before us which indicate a lack of good faith or an improper motive in the institution and conduct of such proceedings.

The Public Utility Law in § 901 (66 PS § 1341) provides, in part, as follows: "The Commission may make such regulations, not inconsistent with the law, as may be necessary or proper in the exercise of its powers or for the performance of its duties under this act."

In the case of Wilson v. Public Service Commission (1935) 40 Dauphin County Rep. 1, the power of the Commission to inquire into and regulate the conduct of attorneys before it was upheld. This power was predicated upon a provision of the Public Service Company Law, of which the quoted portion of § 901 of the Public Utility Law is a reënactment ipsissima verba. President Judge Hargest, in the course of his opinion in the Wilson Case, stated:

"Article V, § 26 of the Public Service Company Law of July 26, 1913, P. L. 1374, 66 PS § 690, provides: 'The Commission may make such rules and regulations, not inconsistent with the law, as may be necessary or proper in the exercise of its powers or for the performance of its duties.' This provision gives the Public Service Commission the right to make rules regulating the practice of attorneys before it. We also hold that, even in the absence of statutory right, the Public Service Commission has the inherent right to regulate such practice. The Commission has made no such rules. Does the fact that there are no such rules prevent the Commission from disbarring an attorney? We think not. The power to make general rules under which to act necessarily includes the power to act

without rules in a particular case for the protection of both the Commission and the public and to secure orderly processes in the trial of cases before the Commission."

Also, in § 902 (66 PS § 1342) the Public Utility Law provides:

"Commission to Enforce Act.—In addition to any powers hereinbefore expressly enumerated in this act, the Commission shall have full power and authority, and it shall be its duty, to enforce, execute, and carry out, by its regulations, orders, or otherwise, all and singular the provisions of this act, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the Commission in this act shall not exclude any power which the Commission would otherwise have under any of the provisions of this act."

The power of the Commission to regulate the conduct of attorneys in cases before it is indispensable to the preservation of the dignity and integrity of the Commission's administrative and quasi judicial processes. When abuses arise they must be apprehended, and those responsible for them must be prevented from further participation in Commission proceedings. We strongly feel that Commission power to regulate the conduct of parties in cases pending before it is no less necessary to the protection of Commission process from misuse and perversion. If a suspicion should arise, for example, that any person has instituted a proceeding before the Commission in bad faith, or for the sole purpose of realizing personal gain, the facts should be investigated with a view to appropriate action either by dismissal of the proceeding or otherwise.

It is our opinion that, under §§ 901 and 902 of the Public Utility Law, the Commission has the power to regulate the conduct, not only of attorneys, but also of parties, in proceedings before it, and that the absence of specific rules and regulations does not preclude the Commission from exercising that power. For example, we could lawfully promulgate a regulation providing that a complainant, not a public utility, may be called upon by the Commission to explain any questionable conduct on his part in connection with a case which he has instituted and, further, that, in the event a proper explanation is not forthcoming, the proceeding shall be terminated. The absence of such regulation does not prevent the Commission from pursuing such a course. We proceed with our consideration of the record in the light of these principles.

Since it appears that John J. Lipko is a party to a proceeding before us, namely, C. 10731, we conclude that we have jurisdiction to inquire into his statements and activities in connection therewith. A brief summary of those statements and activities will serve to elucidate the basis for the instant investigation.

The statements were made in radio addresses delivered over Station WKBO, Harrisburg, by John J. Lipko as president, and in behalf of Pennsylvania Utility Consumers Service, Inc., on September 7, 1939, September 14, 1939, September 21, 1939, September 28, 1939, October 5, 1939, October 12, 1939, and October 19, 1939, and in a letter addressed to

Frank A. Robbins, Jr., manager of the Bethlehem Steel Company plant at Steelton, under date of September 23, 1939, and signed by Lipko as president of Pennsylvania Utility Consumers Service, Inc. They are to the effect that, as a result of the efforts of Lipko and Pennsylvania Public Ownership League in prosecuting a complaint against the rates of Pennsylvania Power and Light Company at C. 10731, the public is entitled to refunds from that utility in the amount of some twenty million dollars; that consumers individually or in small groups would be unable, because of the great expense involved, to secure the refunds to which they might be entitled from Pennsylvania Power and Light Company, and that an organization such as Pennsylvania Utility Consumers Service is necessary to enable the public to accomplish that purpose. Further statements are to the effect that Pennsylvania Utility Consumers Service, Inc., is an organization equipped and qualified to assist the public in securing rate reductions and refunds, and that the statements which were made in behalf of Pennsylvania Utility Consumers Service, Inc., regarding reparations from Pennsylvania Power and Light Company, were based on the corporation's independent study and research of the utility's properties and affairs.

These statements are clearly erroneous and misleading. There is not the slightest foundation for any assertion that the public will be entitled to refunds by reason of the efforts of Lipko and Pennsylvania Public Ownership League in respect to their complaint at C. 10731. The record in C. 10731 was incorporated into the record in the instant case and discloses that, although the complaint has been scheduled for hearing numerous times during the four and one-half years of its pendency, not a scrap of testimony was ever offered in support thereof by complainants or by anyone in their behalf. In fact, no one appeared in that proceeding at the scheduled hearings or advised the Commission of any reason why the complaint, after it had been instituted, was not being prosecuted. It is important to recall in this connection that the rates of Pennsylvania Power and Light Company had been previously attacked some two years prior to the institution of C. 10731 by a complaint filed March 17, 1933, by Robert Pfeifle, mayor of the city of Bethlehem, at C. 9556. Subsequently, the Public Service Commission, on August 1, 1935, instituted an inquiry and investigation on its own motion into those rates at C. 10867, and it is upon the testimony introduced in that case that this Commission based its temporary rate order of December 5, 1938 (27 PUR(NS) 174) reducing the revenues of Pennsylvania Power and Light Company $2,600,000 annually. Lipko and Pennsylvania Public Ownership League petitioned for leave to intervene in the Commission's proceeding for the principal purpose of examining data which the Commission had prepared, but because all members of the public have access in every case to all Commission data after they are placed of record, this petition was refused. The proceeding at C. 10867 has been conducted solely by the Commission and it is therefore obvious that the Commission—not Lipko or his associates—is responsible for the progress

of the rate investigation of Pennsylvania Power and Light Company.

The provisions of the Public Utility Law itself contradict Lipko's statements that, because of the expense involved, the consumer is not in a position to secure redress for any proven excess collection by Pennsylvania Power and Light Company, or any other utility, without the formation of a large organization for that purpose. Section 313 (a) of that law (66 PS § 1153) provides as follows:

"If, in any proceeding involving rates, the Commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the Commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the Commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within two years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the Commission need not find that the rate complained of was extortionate or oppressive. Any order of the Commission awarding a refund shall be made for and on behalf of all patrons subject to the same rate of the public utility. The Commission shall state in any refund order the exact amount to be paid, the reasonable time within which payment shall be made, and shall make findings upon pertinent questions of fact. An appeal may be taken to the superior court from any refund order, but if no such appeal is taken, the parties shall be bound by the findings and orders of the Commission."

From the above-quoted language it is clearly apparent that the Commission has both the power and the duty on its own initiative in every rate case fully to adjudicate the matter of refunds. For the proper exercise of this power and performance of this duty the Commission is equipped with a large staff of technically trained rate experts and, in addition, possesses the power to inspect and examine all books, records, and papers of all Pennsylvania utilities, a power not conferred upon members of the public generally. These extensive resources of the Commission and its extraordinary powers are completely devoted to the use of all utility consumers in the matter of determining refunds without the need of any formal request on the part of the consumer, and irrespective of any independent action taken by the consumer. While we desire to encourage participation in rate proceedings by the public, and welcome assistance from any consumers or group of consumers interested therein, we desire at the same time to give assurance that the matter of refunds is not one of purely private personal interest in which the consumer is left to his own devices, but is a matter of great public concern in which the Commission is specifically commanded by the legislature to act in behalf of the consumer.

The legislature has further recognized the public interest involved in the return of excess collections, in § 313 (a) of the Public Utility Law which provides a procedure for ascer-

taining refunds much more advantageous to the consumer than that which obtained prior to the passage of that law. Under the provisions of the repealed Public Service Company Law the Commission, even though it had found rates to be unjust or unreasonable, was forced to proceed to a separate determination of whether those rates were also extortionate and oppressive before refunds could be awarded. Under the present law, however, the Commission, upon a finding that rates are unjust or unreasonable, can award reparations without the necessity of a separate proceeding.

Nothing in the record supports Lipko's statements that Pennsylvania Utility Consumers Service, Inc., is capable of assisting the public or the Commission in securing rate reductions and refunds or has in its possession data independently secured which might support its refund claims made to the public. The corporation, as earlier stated, is not a party to any proceeding pending before the Commission, and Lipko did not, at the time of the hearing, name accountants or other technically trained men experienced in the field of public utility regulation, or mention any independent research or study of the matters about which the corporation was presuming to give advice and render service. A firm of engineers was named as having been retained, but Lipko gave no specific description of any engineering activity. In fact, all of the Lipko testimony was reluctant and uninformative with regard to his alleged activities in the public interest.

All of the statements made by Lipko in behalf of the corporation regarding excess rates and refunds involving Pennsylvania Power and Light Company were admittedly based solely upon interpretation of this Commission's rate reduction orders issued in its proceeding against the company, which orders are a matter of record, and are available to all members of the public.

While, as we have earlier stated, we are assured of our jurisdiction to inquire into matters affecting the bona fides of parties to Commission proceedings, the exercise of such jurisdiction is not punitive in its nature, but is for the protection of the Commission in the orderly performance of its functions. Where parties have displayed bad faith in proceedings before it, the Commission has the power to give due weight to such conduct in disposition of the proceedings in connection with which it was exhibited.

In the case of North Whitesides Co. v. Public Service Co. PUR1931E, 383, a similar view was expressed by the Indiana Public Service Commission under circumstances comparable to those here involved. In that case, one Jap Jones filed a complaint against the rates of an electric company serving the city of Franklin. This complaint was filed by Jones after he had negotiated a contract with the city of Franklin wherein he agreed to furnish the services of lawyers, engineers, and accountants in the prosecution of the complaint in consideration for the payment by the city of Franklin of 25 per cent of any reduction in electric rates resulting from the complaint. The Indiana Commission denounced this contract as champertous and fraudulent, and thereupon took action dismissing Jones' complaint. In the course of its opinion the Com-

mission stated (PUR1931E, at p. 392):

"There is another feature of this contract and in this entire transaction that is repugnant to every element of public policy, in that it is a recognized fact that so-called racketeering has supplanted and crowded out legitimate business in this country and is fast entering into the field of governmental activities, and that the transaction in question is conclusive evidence of the fact that such so-called racketeering is being introduced into the field of utility regulation in the state of Indiana to the great detriment of the public and a thing that this Commission feels its duty to place its stamp of disapproval upon and to allow the public to be advised of their rights in seeking redress and obtaining adequate public utility service in conformity with the law and the rights of the public to receive service from this Commission in conformity with the law and without obligating themselves to divide that which is theirs among those who are introducing a system of racketeering for their own selfish gain.

"This entire transaction presents an unquestioned situation whereby the petition in question is not in fact a petition by ten or more consumers of electric service in the city of Franklin, but is a petition by Mr. Jap Jones and the city attorney of the city of Franklin, as it is an admitted fact that after the execution of this contract, this petition was prepared and circulated by the city attorney of the city of Franklin, and handed to Mr. Jap Jones that it might be filed with this Commission for the purpose of carrying into effect the contract in this case referred to as approved by the common council of the city of Franklin. And while such a contract could never be enforced against the city of Franklin, this Commission recognizes its obligation to the public, as a part of the public's government, to the extent that it declines to be a party to any such transaction."

Although the statements and activities of John J. Lipko appear reprehensible on their face, there may be some explanation or circumstance which might tend to alter the opinion we have formed about them, and a full opportunity will be afforded Lipko to appear before us and attempt any justification which he may have, before action is taken relative to C. 10731.

[4] Pennsylvania Utility Consumers Service, Inc., is not a party to any proceeding pending before the Commission, and consequently our jurisdiction, if any, to investigate its statements and activities must be established upon different grounds from those conferring jurisdiction upon us to investigate the statements and activities of John J. Lipko.

Section 1013 of the Public Utility Law (66 PS § 1403) provides as follows:

"The Commission may, in addition to the hearings specially provided by this act, conduct such other hearings as may be required in the administration of the powers and duties conferred upon it by this act and by other acts relating to public utilities. Reasonable notice of all such hearings shall be given the persons interested therein."

The above-quoted section vests a general power in the Commission to conduct hearings other than those

specifically provided by the Public Utility Law, and we are of opinion that this general power may be exercised to inquire into the activities of any person or corporation which appear calculated to cheat the consumers of public utilities of full benefit of the reparation provisions of the Public Utility Law, entrusted to the Commission for administration. The judge of whether the conduct of any person or corporation affects the Commission in its administration of its powers and duties, and whether the powers vested by § 1013 should be invoked, is in the first instance the Commission. The matters developed by the incomplete testimony in this proceeding clearly prove that the Commission properly invoked the jurisdiction vested in it with regard to Pennsylvania Utility Consumers Service, Inc., and it has power to continue the proceeding to ascertain such further facts as may be necessary for the protection of the public and to bring to the attention of other public authorities practices which may be in violation of law.

[5] The Commission has a duty to perform to the public which it may not shirk. It may not rest quiescent and permit a proceeding pending before it to be used either by a party thereto, or by anyone else, for the collection of money by those not morally entitled thereto. Its duty is to advise the public in clear language that if any reparations are due to the consumers of a public utility, the Commission will order them paid in accordance with law, and that it is not necessary for any consumer of a public utility to divide with anyone else that which is legally due him.

This is not a matter involving the right of free speech or any endeavor to prevent any person from criticizing the Commission for the manner in which it performs its public duty; that is the constitutional prerogative of any citizen. If such were the question involved, this proceeding would not have been instituted.

In view of the above-stated considerations, the Commission finds that it has jurisdiction to continue its investigation of Pennsylvania Utility Consumers Service, Inc., as well as of John J. Lipko with a view to announcing its findings to the public and to certifying such findings to any public officer whose duty it may be under the law to act thereupon.

MONTANA PUBLIC SERVICE COMMISSION

Re Town of Hysham

[Docket No. 3132, Report and Order No. 1753.]

Service, § 229 — Abandonment — Alternative service.

The Commission will authorize a municipal utility to abandon service where

the evidence shows that the same service will be rendered by a rural electric association.

[January 23, 1940.]

APPLICATION *for authority to discontinue operation of a municipal plant; granted.*

APPEARANCES: Dr. F. M. Alexander, Mayor, Hysham; John Isaac, City Clerk, Hysham; John Grierson, Superintendent of the Mid-Yellowstone Electric Co-operative Company; John W. Bonner, Counsel, Helena.

Upon report submitted by John W. Bonner, counsel for the Commission, who was duly authorized by the Commission to preside at the hearing on the application of the town of Hysham, Montana, for permission to discontinue operation of its municipally owned electric generating and distribution system on December 20, 1939, at Hysham, Montana.

By the COMMISSION: The petitioner, the town of Hysham, requested this Commission to permit it to discontinue and abandon its municipally owned electric plant and service in Hysham, Montana. The matter was duly set for hearing at Hysham, Montana, on December 20, 1939, upon proper notice to the utility, to its consumers and the public generally. At the hearing evidence was introduced on behalf of the utility and, at the close of the evidence, counsel for the Commission, who presided at the hearing, duly made his report of the proceeding to the Commission which report and hearing were then taken under advisement by the Commission.

The evidence shows that the Rural Electrification Administration of the United States, through an association duly organized, has already constructed facilities for taking over the electric service now rendered by the town of Hysham. It was brought out at the hearing that electrical service under the Rural Electrification Administration will be more efficient and render greater service than is now rendered by the town of Hysham to its consumers.

Where a utility seeks to abandon service and the evidence shows that the same service will be rendered by some other utility or agency, it is our opinion that this is legal ground for granting a petition for abandonment.

Because of the foregoing reasons we are of the opinion that the application for abandonment should be approved.

An appropriate order will be entered.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Benjamin H. Davis et al.

v.

Cheltenham & Abington Sewerage Company

[Complaint Docket No. 10967.]

Reparation, § 50 — Time limits.

1. Reparation cannot be awarded for a period prior to the 2-year period immediately preceding the date of the filing of the initial petition for reparation, although the rates and charges of the utility may have been extortionate and oppressive at that time, p. 282.

Reparation, § 41 — Period of reparation — Date of claim — Later charges.

2. The reparation period never expires on the date of the filing of the claim therefor, and if reparations are in order for any period up to and including the date of the filing of the claim, they likewise would accrue during the subsequent period until such time as the oppressive and extortionate rates and charges were no longer collected, p. 283.

Reparation, § 41 — Period covered — Effect of amended order.

3. Reparation should be awarded for a period beginning with the date of a rate reduction order containing a finding that rates are excessive and unreasonable and ending at the date of an amended order, even though on appeal to the courts the amount of the ordered reduction is corrected and such correction carried out by the amended order, p. 283.

Rates, § 652 — Duty to make adjustments — Expense estimate — Conditional orders.

4. It was incumbent upon a utility to make a rate adjustment when sufficient operating experience warranted a determination of a proper expense allowance, where the Commission had authorized a tariff designed to yield a specified gross revenue and in so doing had stated that certain allowances were based upon the utility's estimates, which were to be allowed until the exact amount could be determined, p. 285.

Reparation, § 41 — Period of reparation — Effect of order.

5. Reparations can be awarded for excessive charges during the period beginning two years prior to the filing of a reparation complaint, although the tariff in effect at that time was filed pursuant to a Commission order, when such order was based upon the utility's expense figures, to be allowed until the exact amount could be determined, and such figures were subsequently found to be excessive, p. 285.

[January 3, 1940.]

DAVIS v. C. & A. SEWERAGE CO.

PETITION to recover reparation for damages sustained by reason of an alleged collection of excessive rates; reparation awarded subject to future hearings to determine damages.

By the COMMISSION: This proceeding is upon petition of Benjamin H. Davis, in his own right, and Glenside Home Protective Association, Inc., assignee of 471 other patrons of Cheltenham and Abington Sewerage Company, respondent, to recover reparations for damages sustained by the complainants by reason of an alleged collection, by respondent, of rates for sewerage service which are alleged to have been unjust, unreasonable, and unjustly discriminatory in the past, and in violation and in excess of an order of the Public Service Commission entered October 6, 1930, at Ruttle v. Cheltenham & A. Sewerage Co. 10 Pa PSC 502, PUR1931A 114. We present the following chronological history of the facts and circumstances surrounding this matter.

The cited order directed respondent to file, post, and publish a tariff designed to yield a "gross return" not in excess of $36,140. Respondent's appeal to the superior court (1932) 107 Pa Super Ct 225, 162 Atl 469, was dismissed and the order of the Commission affirmed. A subsequent appeal to the supreme court (1933) 311 Pa 175, 166 Atl 649, resulted in affirmance of the judgment of the superior court. During the period of appellate review respondent filed Supplement No. 1 and Supplement No. 2 to Tariff Pa. P. S. C. No. 4, effective July 1, 1931, in compliance with the Commission's order of October 6, 1930, *supra*.

In August, 1933, the Commission instituted informal conferences with representatives of respondent seeking voluntary reduction of sewerage charges since an investigation of the books of respondent disclosed that the amount being paid by respondent for sewerage disposal rental to Cheltenham township was materially less than the estimated sum allowed by the Commission in its order of October 6, 1930, *supra*, and for other reasons. These informal conferences were held from time to time until, in 1934, respondent finally refused to make any reduction of its charges. The informal proceedings culminated in an inquiry and investigation, instituted on the Commission's own motion on December 11, 1934, at C. D. 10546, Public Service Commission v. Cheltenham & A. Sewerage Co. On August 30, 1935, the Commission issued an order (14 Pa PSC 76), requiring respondent to file, post, and publish a tariff embodying rates for sanitary sewerage service designed to yield a "net annual revenue" not to exceed the sum of $27,700. Respondent appealed this finding to the superior court, but the opinion of the court (1936) 122 Pa Super Ct 252, 15 PUR(NS) 99, 186 Atl 149, was not handed down until after the Commission had received the instant reparation complaint, and after preliminary legal steps by complainants and respondent had resulted in several intermediate Commission orders.

On October 17, 1935, complainants' initial petition for reparations was

filed with the Commission, on behalf of Benjamin H. Davis, as an individual, and 210 other patrons of respondent sewerage company who have assigned their claims to Glenside Home Protective Association, Inc., an association duly organized and incorporated under the laws of the commonwealth of Pennsylvania. In answer, respondent filed a petition with the Commission, on October 28, 1935, to dismiss the complaint, alleging that the complaint related to then existing rates which were subject to a rate proceeding instituted by the Commission upon its own motion at C. D. 10546, which proceeding remained undetermined at the time, and that the claim for reparations was premature. An answer to respondent's petition was filed by complainants. On November 12, 1935, the Commission issued its initial order in this proceeding, refusing respondent's prayer for dismissal.

Subsequently, on December 2, 1935, respondent filed a petition for rescission of the aforementioned Commission order of November 12, 1935, alleging, inter alia, that no right of action for reparations by complainants would accrue unless and until the superior court affirmed the determinations of the Commission's order in the rate proceeding at C. D. 10546, and that until such time the Commission had no authority to entertain complainants' petition for reparation. Complainants' answer was filed with us on December 9, 1935. An appropriate Commission order, issued on February 3, 1936, refused respondent's prayer, holding that, while respondent's appeal to the superior court acted as a supersedeas in so far as the reasonableness and justness of future rates are concerned, it did not affect the instant petition for reparations pertaining to alleged unreasonable rates collected in the past. Respondent filed a further answer to the complaint on February 19, 1936, praying for dismissal.

On February 28, 1936, Glenside Home Protective Association, Inc., a party in the complaint, filed a petition to intervene on behalf of 261 additional sewerage patrons of respondent who were seeking reparations based upon the same grounds as set forth in the initial reparation petition. The assignment of the petitioners' interest and power of attorney to act for these additional patrons was appended therewith.

Before the receipt of respondent's answer to the supplemental complaint, on April 1, 1936, praying for dismissal, the Commission, by an order dated March 2, 1936, had permitted the intervention on behalf of the additional consumers.

The superior court's decision dated July 10, 1936, *supra,* reversed the order of the Commission in certain respects and the record was remitted to the Commission with directions to reform the findings, valuations, and rates, in accordance with the opinion. Both respondent and the Commission filed petitions for appeal to the supreme court of Pennsylvania and, on September 17, 1936, both petitions were refused by that court.

Accordingly, the Commission issued an order in the rate proceeding on November 30, 1936 (16 Pa PSC 118), embodying the findings of the superior court and directing respondent to file a new tariff which would yield a net annual revenue not to exceed $30,050.

In compliance therewith, respondent filed Tariff Pa P.U.C. No. 5, effective January 1, 1937.

On February 5 and 18, 1937, hearings were held in the instant reparations complaint. Thereafter, on March 25, 1939, respondent filed a brief, and a supplementary brief was filed by respondent at the time of oral argument before the Commission on September 18, 1939. Complainants' brief was filed on October 27, 1938, and, after permission was received from the Commission, complainants filed a supplementary brief on September 25, 1939, the latter being in answer to the supplementary position taken by respondent at the time of oral argument.

Complainants contend that the rates and charges of respondent under its Tariff Pa. P. U. C. No. 4 and supplements thereto, were unjust and unreasonable prior to the Commission's order of August 30, 1935, *supra*, which found that said rates and charges were unjust and unreasonable for the future; that reparations may be awarded by the Commission, under the fifth paragraph of § 5 of Art. V of the Public Service Company Law of July 26, 1913, P. L. 1374, for all charges in excess of reasonable rates since October 17, 1933 (two years prior to the date of filing of the initial petition for reparations); that the complainants, Glenside Home Protective Association, Inc., can recover whatever reparations accrue to those of respondent's patrons who have assigned their claims to that association; and that complainants are also entitled to additional reparations to reimburse them for the revenue collected by respondent since 1930, in excess of the allowable operating revenues determined in the order of the Commission, dated October 6, 1930 (PUR1931A, 114). In reply, respondent initially contended that the rates set forth in its Tariff Pa. P. U. C. No. 4 and supplement thereto were not unjust, unreasonable, or unjustly discriminatory prior to the filing of the petition for reparations (October 17, 1935) or in violation and in excess of the Commission's order of October 6, 1930, *supra;* and that, if reparations can be awarded by the Commission at all, the reparation period cannot be other than from August 30, 1935. the date of the initial Commission order at C. D. 10546, to October 17, 1935, the date of the filing of complainants' petition for reparations with the Commission. However, in its supplementary brief respondent does not now concede that reparations could be awarded for the period beginning August 30, 1935, and ending October 17, 1935, "assuming that reparations could be awarded in any event" by reason of a recent decision of the superior court in Baltimore & O. R. Co. v. Public Utility Commission (1939) — Pa Super Ct —, 31 PUR(NS) 454, 7 A(2d) 488.

Since complainants' petitions for reparations were filed prior to June 1, 1937, the effective date of the Public Utility Law of May 28, 1937, P. L. 1053 (66 P. S. § 511) this matter must be considered and disposed of under the repealed Public Service Company Law from which we set forth the following pertinent portions of Art. V, § 5:

"Section 5. If, after hearing, upon complaint or upon its own motion, the Commission shall determine that any rates which have been collected, or any

acts which have been done or omitted to be done, or any regulations, classifications, or practices which have been enforced for, or in relation to, any service rendered after this act becomes effective, by any public service company complained of, were in violation of any order of the Commission, or were unjust and unreasonable or unjustly discriminatory, or unduly or unreasonably preferential; or, in like manner, shall find that the rates so collected are in excess of the rates contained in the tariffs or schedules of any such public service company on file or posted, and in effect and applicable at any time the said service was rendered,—the Commission shall, upon petition, have the power and authority to make an order for reparation, awarding and directing the payment to any such complainant, petitioner, within a reasonable time specified in the order, of the amount of damages sustained in consequence of said unjust, unreasonable, or unlawful collections, acts, or omissions, regulations, classifications, or practices, of such public service company: Provided, that such damages have been actually sustained by such complainant petitioner.

"The Commission shall state in said order the exact amount to be paid, as well as its findings upon pertinent questions of fact.

. . . . .

"No reparation, as herein provided, shall be awarded by the Commission unless the complaint or petition shall have been filed with it within two years from the time when the cause of action accrued. A suit for the enforcement of an order directing such payment shall be filed in the said court of common pleas within one year from the date of the order, and not after."

The record before us is void of evidence showing the amount of reparations sought or the rights of the various complainants who have assigned their claims to Glenside Home Protective Association, Inc., to receive reparations, if awarded. The procedure before the Commission was determined at the initial hearing limiting the issues to the determination of whether reparations were in order and providing for additional hearings, if reparations were to be awarded, to determine the amount of reparations and the persons entitled to receive such reparations.

In order to clarify and simplify our consideration and disposition of the issues here involved, we have segregated the reparation period under review into the following component periods:

(I) July 1, 1931, to October 17, 1933.

(II) August 30, 1935, to January 1, 1937.

(III) October 17, 1933, to August 30, 1935.

I—July 1, 1931, to October 17, 1933.

[1] The Commission order of October 6, 1930, Ruttle v. Cheltenham & A. Sewerage Co. *supra,* established annual allowable operating revenues of respondent at $36,140. Complainant alleges that, subsequently and in the particular period here under review, respondent's experienced revenues exceeded the Commission's determination of allowable operating revenues, that various expenses for sewer rental and sewage disposal paid by respondent to Cheltenham township

were substantially less than the Commission's allowance in the said order for such expenses, and that by reason thereof reparations are in order. Respondent has contended to the contrary.

Regardless of the merit of the position taken by complainants we cannot find that reparations can be awarded in a period prior to October 17, 1933. We are controlled by the decision of the Pennsylvania superior court, in Bell Teleph. Co. v. Public Utility Commission (1938) 130 Pa Super Ct 514, 24 PUR(NS) 98, 197 Atl 783. The Bell Telephone Company of Pennsylvania appealed from an order of the Public Service Commission issued December 8, 1936 (17 PUR(NS) 276), which directed that the telephone company pay to Dr. Caroline M. White reparations for unjust and unreasonable rates charged by the company in a reparation period beginning July 26, 1933 (two years prior to the filing of the initial complaint against the unreasonableness and unjustness of the rates set forth in the company's tariff), and ending February 10, 1936 (12 PUR(NS) 212) the date upon which the complainant was included in a residential rate classification which was deemed reasonable and just by the Commission. The period of the application of the rates, which were later found to be unjust and unreasonable, started December of 1928 or January of 1929, when Dr. White subscribed for telephone service. Although the court did not sustain the Commission in its award of reparations, it did establish what the reparation period would be, if reparations were to be granted; namely, from June 22, 1934 (two years prior to the filing of the petition for reparations) to February 10, 1936. Therefore, applying the principle here established, reparations could not be awarded for a period prior to October 17, 1933, although the rates and charges of respondent may have been extortionate and oppressive at that time.

II—August 30, 1935, to January 1, 1937.

[2, 3] With respect to the period under discussion, complainants contend that from October 17, 1935, to January 1, 1937, reparations are in order while respondent contends in its supplementary brief that reparations cannot be awarded in the period October 17, 1935, to November 30, 1936, the latter being the date of the issuance of the amended Commission order finding respondent's rates and charges unreasonable for the future.

It is interesting to note that respondent initially contended that reparations could not be awarded for any period subsequent to the date of filing of the reparation complaint, namely, October 17, 1935, citing Centre County Line Co. v. Public Service Commission (1931) 103 Pa Super Ct 179, 157 Atl 815; Pennsylvania R. Co. v. Public Service Commission (1937) 125 Pa Super Ct 558, 190 Atl 367; Bell Teleph. Co. v. Public Utilities Commission, *supra,* and Centre County Lime Co. v. Public Service Commission (1929) 96 Pa Super Ct 590. We cannot find that the facts and circumstances in the cited cases are pertinent to respondent's contention in the instant proceeding.

In the cited cases the rates and charges under attack, as being unrea-

sonable and extortionate in the past, were no longer operative at the time of the filing of the various reparation complaints, while in the instant complaint the rates and charges, attacked as being unreasonable and extortionate in the past, were operative at the time complainant filed its petition for reparations (October 17, 1935) and continued in operation thereafter until January 1, 1937. Under no circumstances can we agree with respondent that the reparation period would expire on the date of filing of the claim for reparation, or October 17, 1935. Manifestly, if reparations are in order for any period up to and including the date of filing of the claim for reparations, reparations would likewise accrue to complainants during a subsequent period until such time as the oppressive and extortionate rates and charges were no longer collected.

Under the decision of the superior court in Baltimore & O. R. Co. v. Public Utility Commission (1939) — Pa Super Ct —, 31 PUR(NS) 454, 7A (2d) 488, respondent contends, in a supplementary brief, that the Commission cannot award reparation to complainants for the period between October 6, 1930, the date of the issuance of the Commission's order at Ruttle v. Cheltenham & A. Sewerage Co. PUR1931A, 114, and November 30, 1936, the date of the issuance of the amended order in Public Utility Commission v. Cheltenham & A. Sewerage Co. (16 Pa PSC 118).

Citing the remarks of the Supreme Court of the United States in Arizona Grocery Co. v. Atchison T. & S. F. R. Co. (1932) 284 US 370, 390, 76 L ed 348, 52 S Ct 183, as follows:

"'Where the Commission has upon complaint, and after hearing, declared what is the maximum reasonable rate to be charged by a carrier, it may not at a later time, and upon the same or additional evidence as to the fact situation existing when its previous order was promulgated, by declaring its own finding as to reasonableness erroneous, subject a carrier which conformed thereto to the payment of reparation measured by what the Commission now holds it should have decided in the earlier proceeding to be a reasonable rate.'"

The superior court said in the Baltimore & Ohio Railroad Company Case, *supra*, 31 PUR(NS) at p. 459: "The principle clearly laid down is that when a regulatory body has prescribed a rate to be charged for the future by a public utility and subsequently decides that such prescribed rate should be reduced, it cannot penalize the utility for collecting that rate during the period elapsing between the date of the order prescribing the rate and the date of the subsequent order reducing it."

Respondent argues that under this decision reparations cannot be awarded for any period prior to November 30, 1936, at which time the Commission issued an amended order setting aside the rates and charges established in compliance with the Commission order of October 7, 1930. However, the initial Commission order of August 30, 1935 (14 Pa PSC 76) found at that time that the same rates were excessive and unreasonable for the future. It is true that respondent appealed the order to the superior court which corrected the amount of the ordered reduction, but the fact re-

mains that the court sustained the Commission finding that the rates and charges were unreasonable and unjust for the future. Consequently, we are of the opinion that respondent's Tariff Pa. P. U. C. No. 4 and supplements were unreasonable, oppressive, and extortionate from August 30, 1935, to January 1, 1937, and that reparations should be awarded accordingly.

III—October 17, 1933, to August 30, 1935.

[4, 5] The question now arises, whether reparations can be awarded in the period beginning October 17, 1933 (two years prior to the filing of a reparation complaint) and ending August 30, 1935. Respondent argues that the decision of the superior court in Baltimore & O. R. Co. v. Public Utility Commission, *supra,* precludes the award of reparations prior to August 30, 1935, since respondent's rates and charges under Tariff Pa. P. U. C. No. 4 and amendments were established in compliance with the Commission order of October 6, 1930, in Ruttle v. Cheltenham & A. Sewerage Co. *supra.*

The Commission order of October 6, 1930, directed respondent to file a tariff designed to yield a gross revenue of $36,140, but in so doing the Commission specifically stated that the Commission allowance for certain sewer rents and disposal charges was based upon respondent's estimate of the obligation it would be called upon to meet in the future and that respondent's estimate would be allowed "until the exact amount is determined, at which time a rate adjustment, if necessary, can be made."

The sanitary sewage of respondent, after collection, is transmitted initially through the trunk sewers of the township of Cheltenham. For this service respondent is charged $5,940 per annum by Cheltenham township. The combined sewage of Cheltenham township and respondent is thereafter conveyed through the trunk sewers and the sewage treatment facilities of the city of Philadelphia for which the city bills Cheltenham township according to the measured quantity of sewage entering the city's trunk sewers. In turn Cheltenham township bills respondent for the proportionate use of the trunk sewers and other facilities of the city of Philadelphia depending upon the size of the city's trunk sewers and the volume of sewage contributed by respondent to the township sewer system. At October 6, 1930, respondent had not been billed by the township under the aforementioned contract, and it was therefore necessary to estimate the expense that would be incurred by respondent on this account. The Commission did not adopt the estimate for such expense submitted by the complainants in that proceeding, but allowed the estimate of respondent, $10,940, subject to the qualification with respect to subsequent rate adjustments.

On July 1, 1930, respondent was billed under the contract with Cheltenham township for the use of the trunk sewers of the said township and the initial bill for the proportionate expense of conveyance and treatment of its sewage by the city of Philadelphia was rendered on June 12, 1931. At March 28, 1933, respondent had

acquired three years' operating experience under the said contract as follows:

	Cheltenham Twp. Sewers	*Philadelphia Sewers and Treatment*	*Total*	*Excess of Commission Allowance over Experienced Expense*
1930	$5,939.66	$2,251.10	$8,190.76	$2,749.24
1931	5.939.66	1,820.20	7,759.86	3,180.14
1932	5,939.66	1,389.32	7,328.98	3,611.02

From the foregoing it will be seen that at March 28, 1933, when respondent received a bill for its proportionate expense of the conveyance and treatment of its sewage by the city of Philadelphia in 1932, the excess of the Commission allowance for the annual expense over that experienced, was $3,611.02, or approximately 10 per cent of respondent's allowable operating revenues.

It is our opinion that, while the Commission order of October 6, 1930, *supra,* established allowable operating revenues of $36,140, it was incumbent upon respondent to make a rate adjustment when sufficient operating experience warranted a determination of a proper allowance for the disposal expense. At March 28, 1933, respondent had had the benefit of three years' operation under the existing contract for sewage conveyance and treatment, incontrovertibly showing that the Commission allowance was obviously excessive. Shortly thereafter the Commission attempted to secure a reduction of rates by means of informal negotiations with respondent, and, when these negotiations failed, the Commission proceeded with a formal inquiry and investigation upon its own motion. The Commission's determination of allowable operating revenues, and the rates and charges established in compliance therewith, were proper as long as the factual situation remained unchanged or unknown, but, subsequent to March 28, 1933, the Commission was of the opinion that the factual situation, anticipated in the said order, had changed and that an adjustment of rates was necessary. When the order of October 6, 1930, *supra,* was issued the Commission recognized that its finding of allowable operating revenues was subject to revision in the indeterminate future and provided for an adjustment upon knowledge of the exact charges. The rights of both parties were thereby protected in the absence of specific data upon the proper charge and, undoubtedly, if the charge had exceeded the Commission's allowance the rates and charges established by Tariff Pa. P. U. C. No. 4 and supplements would have been increased.

Manifestly, the Commission was of the opinion that the order of October 6, 1930, provided for a ready adjustment of rates without the necessity of extended hearings and disproportionate expenses, and sought, by informal negotiations, to rectify the apparent excessive allowance for sewer and disposal expenses as provided for in the order of October 6, 1930. The reparation petitioners should not be prejudiced by reason of the Commission attempt to secure an amicable adjustment of the obvious overcharge without resort to expensive and time-consuming formal proceedings.

With respect to the reasonableness of respondent's rates and charges prior to August 30, 1935, we deem it necessary to review certain evidence, re-

spondent's Exhibit No. 4, which was offered in evidence to show "the good faith of respondent in maintaining in effect the rates here complained of." Complainant objected to the admissibility of the said exhibit and was sustained by the sitting Commissioner. Respondent excepted and now pleads that the ruling, excluding its Exhibit No. 4, was erroneous as to the facts and the law and prays for a reconsideration of the evidence and the said ruling. We have reviewed the above evidence and are of the opinion that the sitting Commissioner erred in excluding the evidence from the record.

Respondent's Exhibit No. 4 consists of copies of 11 letters and an enclosure, all of which were either received by the secretary of respondent company from the Public Service Commission or addressed by him, as secretary of the respondent, to the Public Service Commission, dated variously between May 17, 1933, and December 13, 1933. Of the aforementioned letters, eight pertain to the mechanics of arranging suitable informal conference appointments between respondent company and the Commission, and the submission of data to be used in conjunction with the said conferences. The remaining correspondence, particularly a letter dated August 15, 1933, from the secretary of the Commission to respondent, with an appended report of the Commission's bureau of accounts, and a letter from the then chairman of the Commission to respondent dated December 13, 1933, are used in respondent's brief.

However, the admission of respondent's Exhibit No. 4 does not indicate that respondent's rates and charges under its Tariff Pa. P.U.C. No. 4 and supplements were reasonable and just in the period October 17, 1933, to August 30, 1935. On the contrary, the report of the Commission bureau of accounts dated August 2, 1933, shows that upon the basis of an audit of respondent's books and records and fair value determinations in Ruttle v. Cheltenham & A. Sewerage Co. *supra,* respondent was earning a return in excess of 7 per cent in the years 1930, 1931, and 1932, the excess in 1932 amounting to $4,698. Moreover, respondent's contention that the letter dated December 13, 1933, from the chairman of the Public Service Commission to respondent evidenced "that no reasonable ground existed for making a rate adjustment" at that time, is obviously based upon a flagrant misinterpretation.

Under these circumstances we find that the rates and charges under respondent's Tariff Pa. P.U.C. No. 4 and supplements were unreasonable, oppressive, and extortionate from October 17, 1933, to August 30, 1935, and that reparations should be awarded for that period.

Conforming to the practice followed heretofore, this case will be set down for further hearing, at a time to be designated, to ascertain what damage, if any, complainants in this proceeding have sustained, as well as other patrons of respondent sewerage company.

UNITED STATES SUPREME COURT

Oklahoma Packing Company et al.

v.

Oklahoma Gas & Electric Company et al.*

(— US —, 84 L ed —, 60 S Ct 215.)

Courts, § 9 — Federal jurisdiction — Consent by foreign corporation.

1. A corporation organized in one state and designating an agent for service of process "in any action in the state of Oklahoma" may be sued in a Federal district court of Oklahoma, since that court is a court of Oklahoma within the scope of the consent, p. 289.

Courts, § 23 — Controlling decision — State determination.

2. A determination by the highest court of a state that under certain circumstances the plea of res judicata is inapplicable is determinative in the Federal court on that question of state law, p. 290.

Courts, § 15 — Federal jurisdiction — District court — State court suit.

3. A Federal district court is barred by § 265 of the Judicial Code from enjoining a public utility customer from prosecuting a suit in a state court to recover on a supersedeas bond after a decision adverse to a public utility company in rate litigation, and the fact that the injunction is a restraint of the party and not formally directed against the state court itself is immaterial, p. 290.

(HUGHES, C. J., concurs in separate opinion.)

[January 15, 1940.]

CERTIORARI *to review decree of Circuit Court of Appeals upholding injunction decree against suit in state court to recover on supersedeas bond posted by public utility company in rate litigation; decree reversed with directions to dismiss bill.*

APPEARANCES: Paul Ware, of Chicago, Illinois, argued the cause for petitioners; I. J. Underwood, of Tulsa, Oklahoma, and Streeter B. Flynn, of Oklahoma City, Oklahoma, argued the cause for respondents.

Mr. Justice FRANKFURTER delivered the opinion of the court: The case concerns a rate controversy which has been winding its slow way through state and Federal courts for thirteen years.[1] While the relationship of two

* *Order:* The decision of the supreme court of Oklahoma in Community Nat. Gas Co. v. Corporation Commission (1938) 182 Okla 137, 22 PUR(NS) 509, 76 P(2d) 393, having been brought to the attention of this court for the first time in the petition of respondents for a rehearing of the disposition made of this cause in the opinion delivered on December 4, 1939, that opinion is hereby withdrawn and replaced by the opinion of this day.

The petition for rehearing is denied.

[1] A history of the controversy is to be found in Oklahoma Gas & E. Co. v. Wilson & Co. (1930) 146 Okla 272, 288 Pac 316; Oklahoma

utilities with Wilson & Co., a consumer of natural gas, complicates the situation, the legal issues before us may be disposed of as though this were a typical case of a utility resisting an order reducing its rates.[2] Oklahoma Gas & Electric Company (hereafter called Gas & Electric) appealed to the Oklahoma supreme court from such an order by the Oklahoma Corporation Commission. The reduction was stayed pending the appeal, but to protect Wilson & Co. against a potential overcharge, Gas & Electric gave a supersedeas bond. Gas & Electric lost its appeal, Oklahoma Gas & E. Co. v. Wilson & Co. (1930) 146 Okla 272, 288 Pac 316, and Wilson & Co. brought suit on the bond. That suit was instituted on December 3, 1931, in one of the district courts of Oklahoma. To enjoin prosecution of the latter suit, Gas & Electric on May 20, 1932, invoked the jurisdiction of the United States district court for the western district of Oklahoma.[3] After a complicated series of moves in both state and Federal courts, not necessary here to detail, this relief was granted by the district court on September 10, 1937, and on December 19, 1938, sustained by the circuit court of appeals. Oklahoma Packing Co. v. Oklahoma Gas & E. Co. (1938) 100 F(2d) 770, 28 PUR(NS) 438. Since the case in part was in conflict with the second circuit's decision in Neirbo Co. v. Bethlehem Shipbuilding Corp. (1939) 103 F(2d) 765, and also presented novel aspects of important questions of Federal law, we granted certiorari (1939) 306 US 629, 83 L ed 1032, 59 S Ct 789. We are not concerned with the merits of the Commission's order.

[1] At the threshold we are met by the procedural objection, seasonably made, that Wilson & Co., a Delaware corporation, was improperly sued in the district court of the western district of Oklahoma. The objection is unavailable. Prior to this suit, Wilson & Co. had, agreeable to the laws of Oklahoma, designated an agent for service of process "in any action in the state of Oklahoma." Both courts

Gas & E. Co. v. Wilson & Co. (1931) 54 F (2d) 596, PUR1932C, 216; Oklahoma Gas & E. Co. v. Oklahoma Packing Co. (1934) 6 F Supp 893; Oklahoma Gas & E. Co. v. Oklahoma Packing Co. (1934) 292 US 386, 78 L ed 1318, 54 S Ct 732; Oklahoma Gas & E. Co. v. Wilson & Co. (1936) 178 Okla 604, 63 P(2d) 703; Oklahoma Packing Co. v. Oklahoma Gas & E. Co. (1938) 100 F(2d) 770, 28 PUR(NS) 438.

[2] Oklahoma Natural Gas Co. and Oklahoma Gas and Electric Co., both engaged in the sale of natural gas in and about Oklahoma City, had agreed to a division of territory. Under that agreement, Wilson & Co. bought gas from Gas & Electric. The Oklahoma Corporation Commission found that Natural Gas had held itself out to provide gas to industrial consumers at a lower rate than that at which Wilson & Co. was able to buy from Gas & Electric. The Commission then ordered Natural Gas to provide Wilson & Co. with its gas at prevailing industrial rates. Both Natural Gas and Gas & Electric restricted the order. Natural Gas contended that it had never held itself out to industrial consumers; Gas & Electric claimed that it was being unconstitutionally deprived of its right to sell to Wilson & Co. at the higher rate. If, pending appeal from the Commission, the order were not stayed, Wilson & Co. would have been able to purchase gas from Natural Gas at the lower rate and Gas & Electric would have been forced either to lower its rates to meet the competition or to lose the business.

[3] In 1928 Natural Gas complied with the order; and since that time Wilson & Co. has been buying gas at the lower rate prescribed by the Commission. The sole question now involved in these proceedings is the liability of Gas & Electric to Wilson & Co. for alleged overcharges between 1926 and 1928. The district court found specifically that the Corporation Commission had made no threat to enforce penalties for violations of the 1926 order, and as to the Commission, declined to grant any injunctive relief. Cf. Oklahoma Gas & E. Co. v. Oklahoma Packing Co. (1934) 292 US 386, 390, 78 L ed 1318, 1321, 54 S Ct 732.

below found this to be in fact a consent on Wilson & Co.'s part to be sued in the courts of Oklahoma upon causes of action arising in that state. The Federal district court is, we hold, a court of Oklahoma within the scope of that consent, and for the reasons indicated in Neirbo Co. v. Bethlehem Shipbuilding Corp. decided November 22, 1939, — US —, 84 L ed — (Adv 123) 60 S Ct 153, Wilson & Co. was amenable to suit in the western district of Oklahoma.

[2] Petitioners further urge (1) that their plea of res judicata should have been sustained, and (2) that § 265 of the Judicial Act (Act of March 3, 1911, 36 Stat. at L. 1162, Chap. 231, 28 USCA § 379, derived from § 5 of the Act of March 2, 1793, 1 Stat. at L. 333, 335, Chap. 22), was a bar to the suit.

The claim of res judicata is based on the prior determination in 1930 by the supreme court of Oklahoma that the contested order of the Corporation Commission was valid. Oklahoma Gas & E. Co. v. Wilson & Co. (1930) 146 Okla 272, 288 Pac 316. The pronouncements of the Oklahoma supreme court concerning the character of such a determination—whether under the Oklahoma Constitution it was a "legislative" or "judicial" review—have for a time, however, been ambiguous and fluctuating. After the present bill was filed but before the challenged injunction was decreed, the Oklahoma supreme court had held that its decision in cases like that of Oklahoma Gas & E. Co. v. Wilson & Co. *supra*, was a judicial judgment. Oklahoma Cotton Ginners' Asso. v. State (1935) 174 Okla 243, 51 P(2d) 327. But, in Community Nat. Gas Co. v. Corporation Commission (1938) 182 Okla 137, 22 PUR(NS) 509, 76 P (2d) 393, decided after the decree here in issue, the Oklahoma court formally characterized its review in cases prior to the decision in the Oklahoma Cotton Ginners' Asso. Case, *supra*, as "legislative," refused to give that decision retroactive effect, and therefore deemed the res judicata doctrine inapplicable to these prior reviews. Hence, the plea of res judicata in this case must fail, for on that issue state law is determinative here. Union & Planters' Bank v. Memphis (1903) 189 US 71, 47 L ed 712, 23 S Ct 604; Covington v. First Nat. Bank (1905) 198 US 100, 49 L ed 963, 25 S Ct 562; Wright v. Georgia R. & Bkg. Co. (1910) 216 US 420, 54 L ed 544, 30 S Ct 242.

[3] There remains, therefore, the applicability of § 265 of the Judicial Code.[4] That provision would operate as a bar upon the power of the district court to enjoin proceedings previously brought in the state court on the supersedeas bond, if "the only thing sought to be accomplished by this equitable action" is to stay the continuance of that action. Such was the construction placed upon the bill by the earlier district court of three judges, and such was this court's assumption when the latter decision came here on appeal. Oklahoma Gas & E. Co. v. Oklahoma Packing Co. (1934) 6 F Supp 893, 895; Oklahoma Gas & E. Co. v. Oklahoma Pack-

[4] Section 265 provides: "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

ing Co. (1934) 292 US 386, 389, 78 L ed 1318, 1320, 54 S Ct 732. That case eliminated the Corporation Commission as party to the litigation. The district court to which this court remanded the matter summarized Gas & Electric's claim by way of answer to the action brought by Wilson & Co. in the state court as an attack upon the Commission's order "for substantially the same reasons as set out" in the present bill.

The present suit, therefore, is one for an injunction "to stay proceedings" previously begun in a state court. The decree below is thus within the plain interdiction of an act of Congress, and not taken out of it by any of the exceptions which this court has heretofore engrafted upon a limitation of the power of the Federal courts dating almost from the beginning of our history and expressing an important congressional policy—to prevent needless friction between state and Federal courts. Compare Madisonville Traction Co. v. St. Bernard Min. Co. (1905) 196 US 239, 49 L ed 462, 25 S Ct 251; Simon v. Southern R. Co. (1915) 236 US 115, 59 L ed 492, 35 S Ct 255; Wells Fargo & Co. v. Taylor (1920) 254 US 175, 65 L ed 205, 41 S Ct 93. See Warren, "Federal and State Court Interference," 43 Harvard L Rev 345, 372–377. That the injunction was a restraint of the parties and was not formally directed against the state court itself is immaterial. Hill v. Martin (1935) 296 US 393, 403, 80 L ed 293, 298, 56 S Ct 278. Cf. Kohn v. Central Distributing Co. (1939) 306 US 531, 83 L ed 965, 59 S Ct 689; Steelman v. All Continent Corp. (1937) 301 US 278, 81 L ed 1085, 57 S Ct 705, 33 Am Bankr Rep (NS) 509, pressed upon us by respondents and relied upon below, is plainly inapplicable.

Neither record nor findings below give any other basis for injunctive relief save the threatened injury implied in the state court lawsuit; and that could not be enjoined. The decree below is reversed, with directions to dismiss the bill.

Reversed.

The Chief Justice, Mr. Justice McReynolds and Mr. Justice Roberts adhere to the views expressed in their separate opinion in this case.

[Editor's Note. The majority opinion, delivered on December 4, 1939, and published in 84 L ed Adv Ops at page 194, 60 S Ct 215, was withdrawn and the above opinion substituted. The following concurring opinion which accompanied the original decision of the court is adhered to by the concurring justices.]

Mr. Chief Justice HUGHES, concurring:

I concur in the reversal of the judgment upon the ground that Wilson & Co., a Delaware corporation, was not amenable to suit in the Federal district court in Oklahoma. The question is essentially the same as that presented in No. 38, Neirbo Co. v. Bethlehem Shipbuilding Corp. decided November 22, 1939 [— US —, 84 L ed —, (Adv 123) 60 S Ct 153], and what was said in the dissenting opinion in that case need not be repeated here. (See, as to the scope of the consent under the Oklahoma statute, the observations of the circuit court of appeals in the Neirbo Case (1939) 103 F(2d) 765, 769.)

But if it be granted that the Delaware corporation was amenable to the process in question, I am unable to agree that the complainants should be denied relief because of the defense of res judicata. The judgment to which this effect is given was rendered by the supreme court of Oklahoma in 1930, sustaining, on appeal, an order of the Corporation Commission requiring gas to be furnished to Wilson & Co. at a specified rate. Oklahoma Gas & E. Co. v. Wilson & Co. 146 Okla 272, 288 Pac 316. At the time of that decision, the review by the supreme court of Oklahoma of such an order of the Corporation Commission was considered to be legislative in character. Oklahoma Nat. Gas Co. v. Russell, 261 US 290, 291, 67 L ed 659, 661, PUR1923C, 701, 43 S Ct 353; McAlester Gas & Coke Co. v. Corporation Commission, 101 Okla 268, 270, PUR1924E, 3, 224 Pac 698; Poteau v. American Indian Oil & Gas Co. (1932) 159 Okla 240, 242, 243, PUR1933C, 318, 18 P(2d) 523, in which the state court cited with approval the decision to that effect of the circuit court of appeals in Oklahoma Gas & E. Co. v. Wilson & Co. (1931) 54 F(2d) 596, 598, 599, PUR 1932C, 216, applying the Oklahoma decisions. Compare Oklahoma Gas & E. Co. v. Oklahoma Packing Co. (1934) 292 US 386, 388, 78 L ed 1318, 1320, 54 S Ct 732; Oklahoma Corp. Commission v. Cary (1935) 296 US 452, 458, 80 L ed 324, 326, 12 PUR(NS) 161, 56 S Ct 300. The contention of the complainants before the state court was that the Commission's order violated their rights under the Federal Constitution. (146 Okla 272, 281 288, 288 Pac 316.) But in the view, as then held, that the action of the state court was legislative in character, no appeal lay to this court from the state court's determination of the Federal question. Prentis v. Atlantic Coast Line Co. (1908) 211 US 210, 226, 227, 53 L ed 150, 158, 159, 29 S Ct 67; Oklahoma Nat. Gas Co. v. Russell, *supra*. Accordingly, the complainants brought this suit in the Federal court to enjoin the enforcement of the Commission's order. It was not until several years later (in 1935) that the Oklahoma supreme court decided, in a suit between other parties, that its action in reviewing such an order of the Commission was judicial and not legislative in character. Oklahoma Cotton Ginners' Asso. v. State, 174 Okla 243, 51 P (2d) 327. The manifest injustice of holding that complainants are bound by the state court's ruling in 1930 as a judicial determination, when at that time under the state court's construction of the state Constitution the complainants were not at liberty to treat the ruling as a judicial determination and to obtain a review of the Federal question by this court upon that ground, is not met, as it seems to me, by invoking the general doctrine of res judicata.

Whether the judgment of a state court is res judicata is a question of state law. The Federal courts are not bound to give such domestic judgments any greater force than that awarded them by the courts of the state where rendered. Union & Planters' Bank v. Memphis (1903) 189 US 71, 75, 47 L ed 712, 715, 23 S Ct 604; Covington v. First Nat. Bank (1905) 198 US 100, 109, 49 L ed 963, 967, 25 S Ct 562; Wright v. Georgia R.

& Bkg. Co. (1910) 216 US 420, 429, 54 L ed 544, 554, 30 S Ct 242. I think that we are not at liberty to assume that the Oklahoma court would so far depart from the plain requirements of justice as to preclude in these circumstances a review of the Federal question in a court of competent jurisdiction. The state court has not spoken to that effect and what the state court has said I think clearly imports the contrary.

This appears from its decision in Oklahoma Gas & E. Co. v. Wilson & Co. (1936) 178 Okla 604, 63 P(2d) 703. That was an action in the state court on the supersedeas bond given on the appeal to the supreme court from the Commission's order in question, and Wilson & Co., the plaintiff, had judgment. The supreme court reversed that judgment and directed a stay pending the determination in this very suit in the Federal court of the validity of the Commission's order. The supreme court expressly referred to its decision, in 1935, in Oklahoma Cotton Ginners' Asso. v. State, *supra,* that its action in reviewing orders of the Commission affecting rates of public utilities constituted a judicial determination of the questions involved. But instead of holding that the ruling in 1930, upon the order now under review, constituted a final adjudication of the validity of that order, the supreme court held that the question of validity was an open one for determination by the Federal court in the present suit. After saying that in view of the uncertainty with respect to the "right to a judicial remedy in the state courts," the Federal court had acquired jurisdiction of this suit, the state court, at p. 606 of 178 Okla, concluded as follows:

"That remedy was available to them as the only certain method of obtaining a judicial determination of the validity of the Commission's order. The suit was a direct attack upon such order, and until its validity was established in that suit, the state court was without jurisdiction to proceed with an action based upon such order. This for the reason that where direct attack in equity is made upon the order of the Commission, the defendants' liability on such order is not finally determined judicially until final determination of the equitable action."

If under the state law as thus declared in Oklahoma upon consideration of the particular circumstances of this case, liability on the Commission's order is not finally determined judicially until the determination of that question in this equity suit, I am at a loss to understand how the action of the state court on the 1930 appeal can be regarded as res judicata and thus a bar to that determination.

The decree below enjoining enforcement of the Commission's order appropriately followed the determination of its invalidity. The point that the decree should not have gone further and enjoined the prosecution of the action in the state court upon the supersedeas bond is at best only one of technical importance, as the state court itself enjoined such proceedings pending the determination of this suit, apparently in the view that a determination herein of the invalidity of the order would dispose of the merits.

Mr. Justice McReynolds and Mr. Justice Roberts join in this opinion.

PENNSYLVANIA SUPERIOR COURT

Land Title Bank & Trust Company

v.

Pennsylvania Public Utility Commission et al.

(— Pa Super Ct —, 10 A(2d) 843.)

Rates, § 313 — Combined billing — Apartments — Wholesale service.

Persons owning and operating an apartment development through the medium of a Massachusetts trust are not entitled to purchase electric service therefor under a wholesale rate even though the bills for such service are sent to and paid by the trustee rather than the individual tenants of the apartments, and though the quantity of consumption meets the requirements of the wholesale tariff.

[January 30, 1940.]

APPEAL *from Commission order denying right to purchase electric service under wholesale rates; affirmed. For Commission decision, see 23 PUR(NS) 178, and for decision on reargument, see 26 PUR(NS) 187.*

Argued before Keller, P. J., and Cunningham, Baldrige, Stadtfeld, Parker, and Rhodes, JJ.

APPEARANCES: Thomas Burns Drum, John V. Lovitt, and Ballard, Spahr, Andrews & Ingersoll, all of Philadelphia, for appellant; Samuel Graff Miller, Assistant Counsel, of Harrisburg, and Harry M. Showalter, Counsel, of Lewisburg, for appellees; Frank M. Hunter, of Chester, for intervener.

STADTFELD, J.: This is an appeal from the action of the Pennsylvania Public Utility Commission denying appellant the right to purchase electric service under a wholesale rate contained in the tariff filed by the respondent electric company.

Appellant owns and operates an apartment development known as Villa D'Este, located in Upper Darby township, Delaware county, Pennsylvania. This development consists of 264 apartments constructed and operated as a group.

Respondent now meters each apartment separately and bills at its "residence rate," although these bills (with few exceptions) are sent to and paid, not by the individual tenants of the apartments, but by appellant.

On October 31, 1934, appellant demanded that respondent furnish electric service for the entire development metered at a single point under respondent's W. L. P. (wholesale light and power) rate. Respondent made several tests which show that the W. L. P. rate would result in substantial reduction. Respondent refused

appellant's demand and on October 28, 1935, appellant filed a complaint with the Public Service Commission to compel respondent to grant appellant the W. L. P. rate. The case was heard and argued before the Public Service Commission but that Commission went out of existence without deciding the case, and on March 7, 1938 (23 PUR(NS) 178), the newly created Pennsylvania Public Utility Commission entered an order dismissing the complaint. A petition for rehearing and reargument was presented and dismissed on October 10, 1938 (26 PUR(NS) 187).

It is agreed that as far as the quantity of consumption is concerned, appellant meets the requirements of the tariff but the Commission denied that appellant was a "customer" within the meaning of the tariff.

By stipulation, made part of the record, complainant and respondent agreed on most of the facts deemed by either to be relevant and material.

Sometime in 1926, John H. McClatchy, a real estate developer, purchased a tract of land in Upper Darby township, Delaware county. In the same year, he received permits for construction of dwellings to be erected on this tract of land. Pursuant to the authority granted by these permits he built 66 structural units which were divided into 132 vertical duplex dwellings of 264 apartments now known as the "Villa D'Este."

The Villa D'Este Development is described as follows: One apartment section parallels the south side of Glenthorne road; another section directly south and paralleling the former with an open court between is on the northern side of Radbourne road; another section paralleling the above two sections is on the south side of Radbourne road; another section northwest of the intersection of Glenthorne road and Guilford road runs in a northerly and southerly direction; and the last section is northeast of the intersection of Glenthorne road and Alderbrook road paralleling the latter road, and runs approximately in a northeasterly-southwesterly direction.

While the structures were in the course of construction, the said John H. McClatchy made application to the Delaware County Electric Company, since merged into the respondent company, requesting provision of the necessary facilities for electric service to the said development. The application contemplated the separate supply and separate metering of electricity by the electric company to each of the 264 apartments or residences. Pursuant to this request, the Delaware County Electric Company installed the necessary equipment and the requested service has been maintained since that date. Intervener's investment for the installation of this service exceeded $8,500.

Prior to July 30, 1926, the said John H. McClatchy placed upon each vertical half of each of the 66-apartment structures, that is to say, upon each of the 132 vertical duplex dwelling structures, first and second mortgages. The first mortgages are owned by various unrelated entities. The second mortgages are owned by four separate and unrelated building and loan associations, the properties to which the mortgages appertain not being contiguous.

On July 30, 1926, and subsequent to the placing of the mortgages, the

said John H. McClatchy and Mary E., his wife, conveyed the property to The Land Title & Trust Company by deed.

On August 2, 1926, a certain agreement of trust was executed wherein the said John H. McClatchy and Mary E., his wife, were parties of the first part, and The Land Title & Trust Company was party of the second part, and the holders of certificates under the terms of the agreement and their assigns were parties of the third part.

The trustee had the power and duty to collect certain charges from the certificate holders and allocate the charges so collected for payment of taxes, mortgage interest, insurance, building and loan dues, interest and premium, janitorial service, and for making ordinary repairs necessary to maintain the external structure. The trustee also had the authority to refinance the mortgages for the same amount if refinancing was necessary.

The rights and interests of the various certificate holders are stated in the trust agreement and the several schedules appended and endorsed thereon as follows: "This certifies that . . . as holder of one of these certificates is (or are) entitled to the exclusive ownership and occupancy of apartment . . . of Apartment House No. . . . under the terms of the Deed of Trust."

All certificates of ownership but 12 were issued to purchasers who had paid the said John H. McClatchy. These remaining 12 were issued in the name of John Dolan, straw man for the said John H. McClatchy. After a time, and from time to time, holders of various ownership certificates defaulted in the payment of the monthly charges due under the Agreement of Trust. As a consequence of the defaults by the various certificate holders the trustee exposed for sale at public auction the equitable interests of the defaulting parties, including the equitable interests in their shares of building and loan stock. The ownership certificates were struck down at said public auction to the said John H. McClatchy or to his nominee or to the said trustee or to its nominee. At a later date, because of the numerous defaults by certificate holders, various of the second mortgages covering the vertical premises as aforesaid, became in default. As a result of the defaults in the second mortgages, an agreement was entered into on December 21, 1933, between the said John H. McClatchy and Mary E., his wife, the trustee and all the second mortgagee building and loan associations. This agreement, in essence, provided that the said John H. McClatchy transfer to the respective mortgagee building and loan associations the "Ownership Certificates" acquired by him or for him in the various public auctions and the twelve "Ownership Certificates" issued to John Dolan, straw man for John H. McClatchy, as herein earlier mentioned, and also transfer all his right, title and interest under the trust agreement to the holders of the second mortgages. The agreement of December 21, 1933, in addition, provided that The Real Estate Land Title & Trust Company should collect "from the occupants of the various apartments the sums payable by them either as certificate holders or as lessees of the apartments." The sums collected from the "Certificate Holders

shall be applied as heretofore in accordance with the Agreement of Trust. The rentals from the leased apartments shall be applied to operating expenses including trustee's expenses, to the payment of the taxes and interest on first mortgages on the leased apartments, and to pay over any remainder to the Building and Loan Associations in proportion to the amount of mortgages held by them respectively on all of the apartments which are not occupied or equitably owned by the Certificate Holders."

After the agreement of December 21, 1933, defaults occurred on additional second mortgages by reason of defaults in monthly payments due under the Agreement of Trust on the "Ownership Certificates" and the trustee, from time to time, declared the original "Ownership Certificates" forfeited and issued what purported to be "Ownership Certificates," to the proper building and loan associations holding the second mortgages on the vertical structures to which said default "Ownership Certificates" appertained.

It appears, therefore, from an analysis of the record that at the time of the filing of the stipulation of evidence, the situation was such that there were 59 nondefaulting certificate holders who were in possession of the apartments to which the certificates appertained. The remaining 205 certificates were in possession of four building and loan associations because of failure by the various certificate holders who were entitled to "equitable ownership," and the use and occupancy of the apartments to which they appertained, to pay the necessary charges, in consequence of which, the second mortgages on the vertical dwellings became in default.

Complainant, in an endeavor to establish its right to come within the classification of wholesale light and power rate, presents the contention that it is a "customer" within the meaning of that classification because it operates as a business unit and for a single purpose through the medium of an association commonly referred to as a "Massachusetts Common Law or Business Trust."

In passing, we might call attention to the fact that the trust agreement between John H. McClatchy of the first part, and The Land Title & Trust Company, trustee, of the second part, and the certificate holders who joined therein, while providing for the collection from the certificate holders of certain sums to pay for taxes and water rents upon the units of which their respective apartments formed a part, and other charges for maintenance, repairs, etc., did not provide for the collection of any sum for electric service.

It is not necessary for us to pass on the nature or legal effect of this trust agreement, except to the extent necessary to decide whether appellant should be afforded the benefits of the wholesale light and power rate classification of respondent's tariff.

Our attention has been directed to the following excerpts from respondent's tariff: "Definition of terms and explanation of abbreviations. . . . Customer. Any person, partnership, association, or corporation lawfully receiving service from the company."

"The Electric Service Tariff. Application. The tariff provisions apply to everyone lawfully receiving electric

service from the company, under the rates therein, and receipt of electric service shall constitute the *receiver* a *customer* of the company as the term is used herein, whether service is based upon contract, agreement, accepted signed application, or otherwise." (Italics supplied).

"Tariff Options. Choice of Rate. Where the class of service-supply or conditions of use are such that two or more rates are available, the customer shall select the rate or rates to be applied to his service."

"Rate PD Primary-Distribution Power. Availability. Untransformed electric service from the primary supply-lines of the company's distribution system where the customer installs, owns, and maintains, any transforming, switching, and other receiving equipment required."

"Rate WLP. Wholesale Light and Power. Availability. Electric service for use in large quantities for light and/or power, at the option of the customer."

Respondent's Rule 2.2 provides: "2.2 Single Point Delivery. Unless otherwise stipulated therein, the rates named in the tariff for each class of service are based upon the supply of the service to one entire premise through a single delivery and metering point. Separate supply for the same customer at other points of consumption shall be separately metered and billed."

As a result of the transactions hereinbefore recited, some of the dwellings now are held and occupied by nondefaulting certificate owners; some are occupied as tenants, respectively, of four unrelated building and loan associations, mortgagees-in-possession; some are occupied by tenants of a building and loan association claiming ownership through the settlor of the trust and some are occupied as tenants of a fifth building and loan association. Also, by reason of the same, appellant functions as trustee under the trust as to the certificate owners, as a rental agent severally for each of the four mortgagees-in-possession and as a rental agent for the building and loan associations, not mortgagees-in-possession.

Because of the physical, structural, and geographic characteristics of the development and of the manifold ownership, possessory and occupancy interests pertaining thereto, intervening appellee declined to treat the 264 dwellings, or the appellant in its diverse relationships thereto, as a single customer unit for single point electric service.

Quoting from the report of the Commission, *supra,* 23 PUR(NS) at p. 186: "Taking into consideration all the evidence presented, that the certificate holders are the 'equitable owners' and in many instances the occupants of each apartment, that the trustee's duties are limited and not discretionary, that no profit was contemplated, that the whole group of apartment house dwellings in general does not have common conveniences, that for all practical considerations each is a separate and distinct residence having all the necessary facilities and being entirely complete in itself, it is our opinion that this association is not such a bona fide business unit as would entitle it to come within the Wholesale Power and Light Classification of respondent's tariff.

"To sustain this complaint would

be to sanction the organization of whole blocks of individual owners into associations like these for the sole purpose of affording themselves the benefits of a classification to which, as individuals, they would not be entitled. These associations could redistribute the energy to the owners and occupants of the various premises. This device would not necessarily confine itself to electric companies but could be employed by individual owners to afford themselves the benefits of more favorable classifications of other utility companies. The effect of such an arrangement would be to result in upsetting the whole rate structure under which the service of the Philadelphia Electric Company and other utilities is furnished, to the detriment and discrimination of thousands of other individual consumers; . . . .'"

To permit separate customer units to combine for single point service would be to violate the fundamental theory upon which the pricing of intervener's tariff schedules are based.

The instant case is governed by Hunter v. Public Service Commission (1933) 110 Pa Super Ct 589, 2 PUR (NS) 285, 289, 168 Atl 541, 544, in which we stated: "We do not think that the mere fact that the contract for supply is made with the individual who owns all of the properties is controlling of the situation, in view of all the other circumstances connected with the use of the properties. . . . 'Neither the fact that there are several buildings on the plot receiving separate services, nor the fact that the sole owner of these buildings would be the contracting party for water service rendered thereto, are the factors upon which to determine this complainant's grievance. The real point at issue is whether the complainant is a single commercial-industrial consumer receiving water for the purposes of one business unit, or whether the thirty-four tenants are each essentially separate domestic and/or commercial consumers. . . .'"

In that case, the principle of single point metering was denied even where the separate structures were truly owned by one entity, where they were contiguous to one another, and where no public highways divided their treatment.

The other customers and buildings to which appellant calls attention in its brief bear no similitude to those in the instant case.

A similar question to that in the instant case was involved in the case of United States v. American Water-Works Co. (1889) reported in 37 Fed 747, where in an opinion by Brewer, J., a similar conclusion was arrived at as stated in the syllabus of that case: "The Omaha waterworks ordinance provides that the company shall furnish water to citizens residing along the line of its mains at certain rates, and gives a tariff for dwelling houses according to the number of rooms and other buildings of different kinds. Rents for other purposes are fixed by meter rates, lowering inversely to the amount of water taken. Held, that the company has the right to treat each building separately; and the United States, as owner of the Fort Omaha reservation,—a tract of many acres, on which are dwellings for officers, hospitals, warehouses, and barracks,—is not entitled to be supplied as a single

consumer." See also, Thompson v. Goldsboro (1909) 151 NC 189, 65 SE 901; Brand v. Water Comrs. of Billerica (1922) 242 Mass 223, 228, 136 NE 389.

Section 1107 of the Public Utility Act, 66 P. S. § 1437, provides: "The order of the Commission shall not be vacated or set aside, either in whole or in part, except for error of law or lack of evidence to support the finding, determination, or order of the Commission, or violation of constitutional rights."

After a careful consideration of the entire record, we believe the Commission was justified in finding that neither Villa D'Este nor appellant in its relation thereto, constituted a single customer for the purposes sought in the complaint. Any other determination would be a discrimination in the petitioner's favor as against other retail customers similarly situated.

The assignments of error are overruled and the order of the Commission is affirmed at the costs of appellant.

Hirt, J., absent.

WISCONSIN PUBLIC SERVICE COMMISSION

Re Village of Trempealeau

[2-U-1487.]

Rates, § 360 — Electric — Seasonal users.

Higher rates to seasonal electric users are reasonable, in view of the short-term service and the distance between seasonal users' residences and urban distribution system, occasioning relatively higher maintenance charges and line losses.

[February 5, 1940.]

INVESTIGATION *on motion of Commission of rates, rules, and practices of a municipal electric utility; rates, rules, and regulations established.*

By the COMMISSION: The Commission on its own motion decided to investigate the rates, rules, and practices of the village of Trempealeau as an electric utility. Notice of investigation, hearing, and assessment of costs was entered on August 10, 1939.

Hearing: At Madison on September 1, 1939, before examiner C. J. Jasper.

APPEARANCES: Village of Trempealeau by G. V. Leavitt, Village Clerk; of the Commission staff: John E. Rohan, Rate Analyst.

This proceeding was instituted after a study of the utility's annual report had indicated that the utility had earned an excessive return in 1938. This conclusion, however, was subject to any changes that might result from

variations in the figures set forth in the annual report. In addition it was observed that the rules filed by this utility were incomplete. Since the hearing in this matter there have been conferences and an exchange of correspondence between members of our staff and representatives of the utility with respect to its rates and extension rules.

It appears that customers on the so-called South street line were in the past required to pay an $80 connection charge plus the cost of the necessary transformer. This connection charge was refunded pro rata among the customers served from the extension including the new customers or customer. The payment of the $80 connection charge has probably deterred some rural customers from taking electric service. Twelve of the fourteen customers served from the South street extension have expressed their willingness to have the $80 connection charge eliminated and it has been indicated that the other two customers are likewise agreeable to this discontinuance but could not be contacted. Rural customers not on the South street line were required to pay the full cost of the extension.

The rural extension rules attached hereto and made a part hereof supersede the utility's present practice in making rural extensions both to customers served for the South street line and to rural customers in other areas not served from that line. The utility indicated its willingness and desire to place into effect rules of the general character herein prescribed.

The residential and commercial lighting rates prescribed herein will give small reductions to residential and commercial customers whose monthly use of service exceeds 30 kilowatt hours and 80 kilowatt hours, respectively. No residential or commercial user will be adversely affected.

The utility has had seasonal rates on file providing for the billing of seasonal customers on the urban rates plus a $3 annual seasonal charge. It appears, however, that this rate has not been strictly applied. Higher rates to seasonal users are considered reasonable when consideration is given to the fact that seasonal service is short-term service and that for the most part seasonal users reside at some distance from the utility's urban distribution system, thereby occasioning relatively higher maintenance charges and line losses.

The rural rate herein prescribed will have no substantial effect on payments made by rural customers. A number of these customers will receive monthly decreases of approximately 10 cents during some months of the year. In other months when the kilowatt-hour consumption varies an increase of 10 cents may be effective. It is likely that increases during certain months will be largely offset by decreases in other months and that the over-all effect will not substantially affect any customer's cost of service. The rate revisions herein prescribed will have a limited effect on the utility's revenues and will not reduce its earnings below a fair return.

The Commission finds:

1. That the existing rates charged by the village of Trempealeau as an electric utility for residential, commercial, rural, and seasonal service, and

the existing rules relating to extensions of service to rural and seasonal customers are unreasonable.

2. That the rates herein prescribed for residential, commercial, rural, and seasonal service, and the rules and regulations respecting extensions of service to rural and seasonal customers as herein prescribed are reasonable and proper.

MISSOURI PUBLIC SERVICE COMMISSION

Re Burlington Transportation Company

[Case Nos. 8820, 8843, 8861.]

Certificates of convenience and necessity, § 11 — Powers of Commission — Points to be established on carrier route.

The Commission has no authority to authorize service to and from points that may hereafter be established on the route of a motor carrier, in view of the statutory requirement of a hearing prior to authorization for the furnishing of service.

[February 21, 1940.]

APPLICATION *for motor carrier certificate and application for transfer of certificates; former order corrected on supplemental application and authorization for points later to be established denied.*

By the COMMISSION: By order dated November 22, 1934, in Case No. 8820, the Burlington Transportation Company was granted authority to operate as a passenger-carrying motor carrier intrastate and interstate over a regular route extending from the Missouri-Iowa state line to St. Joseph with the right to receive and discharge passengers, baggage, and express at Rockport, Tarkie, Fairfax, Craig, Mound City, Oregon, Savannah, and St. Joseph.

Through inadvertence, the Commission failed to include in that order the right to serve Linden Junction, Missouri, and by supplemental application filed March 31, 1939, the Burlington Transportation Company seeks authority to serve this point in addition to those previously authorized.

By order dated October 9, 1934, in Case No. 8843, the Burlington Transportation Company acquired by transfer the right to operate as a passenger-carrying motor carrier over an intrastate regular route from a terminus at St. Joseph to a terminus at Maryville; from Maryville, Missouri, to Missouri-Iowa state line; and from a terminus at Rockport to a terminus at Maryville, Missouri. The Commission failed to name the points on those routes that applicant is authorized to serve, and by application filed on March 31, 1939, applicant requests

that it be specifically authorized to receive and discharge passengers, baggage, and express at the points of Savannah, Junction of U. S. Highways Nos. 71 and 275, Rosendale Junction, Bolckow Junction, Bernard Junction, Pumpkin Center, Maryville, Wilcox, Burlington Junction, Clearmont, and St. Joseph.

By order dated October 30, 1934, in Case No. 8861, the Burlington Transportation Company acquired by transfer authority to operate as a passenger-carrying motor carrier over an intrastate regular route from a terminus at St. Joseph to a terminus at Forest City, Missouri. Through inadvertence the Commission failed to authorize service to and from the point of Nodaway river, located between these termini, and by supplemental application filed March 31, 1939, applicant requests supplemental order authorizing it to receive and discharge passengers, baggage, and express at the point of Nodaway river.

These applications were assigned for hearing at Jefferson City, Missouri, on February 14, 1940, at which time there was a hearing before a member of the Commission after due notice to interested parties. Applicant appeared by counsel.

At the hearing applicant requested that in addition to correcting these orders to include the points erroneously omitted, they be granted authority to serve resorts, filling stations, or any communities that may be hereafter established on any of these routes.

Section 5267 Rev. Stats. Missouri, 1929, provides in part:

"It is hereby declared unlawful for any motor carrier to operate or furnish service (as a common carrier) within this state without first having obtained from the Commission a certificate declaring that public convenience and necessity will be promoted by such operation. The Commission upon the filing of a petition for a certificate of convenience and necessity shall within a reasonable time fix a time and place for hearing thereon. . . ."

In view of the above provision in the statute, the Commission is clearly of the opinion it is without statutory authority to authorize service to and from points that may be hereafter established on the route of a motor carrier. To do so would be authorizing such carrier to furnish service at such points without a hearing at which interested parties could appear and offer testimony for or against such service.

It appears that failure to specifically name the points herein sought to be served was an error on the part of the Commission, and that a supplemental order should be issued specifically naming the points which applicant is authorized to serve, and the Commission so finds.

UNITED STATES SUPREME COURT

Bell Telephone Company of Pennsylvania

v.

Pennsylvania Public Utility Commission

[No. 252.]

(— US —, 84 L ed —, 60 S Ct 411.)

Appeal and review, § 2 — Due process — Commission findings — Sufficiency of evidence.

1. A state court, in the absence of other constitutional objections, cannot be said to have denied due process when on appropriate hearing it determined that there was evidence to sustain a Commission finding, p. 305.

Courts, § 12 — Federal questions — Error of state court.

2. The contention that a state court's decision (that there was evidence to support a Commission finding of a violation of state law with respect to the conduct of local affairs) was erroneous, does not present a Federal question, p. 305.

Interstate commerce, § 79 — State Commission jurisdiction — Discrimination in rates.

3. A state Commission is competent to establish intrastate telephone rates and, in so doing, to decide what constitutes an unreasonable discrimination with respect to intrastate traffic, provided such rates are not confiscatory, p. 305.

Interstate commerce, § 28 — Burden on — Intrastate toll rates —Conformity with interstate rates.

4. A Commission order requiring a telephone company to revise its intrastate toll rates so as to conform to interstate rates charged for comparable distances did not constitute a burden upon interstate commerce, p. 305.

[January 29, 1940.]

APPEAL *from decision of state court affirming Commission order reducing telephone toll rates; appeal dismissed. For lower court decision, see 135 Pa Super Ct 218, 28 PUR(NS) 266, 5 A(2d) 410.*

APPEARANCE: Mr. Benjamin O. Frick, of Philadelphia, Pennsylvania, argued the cause for appellant.

The court declined to hear further argument.

PER CURIAM: The Pennsylvania Public Utility Commission, by order of March 15, 1938 (23 PUR(NS) 173), required appellant, the Bell Telephone Company of Pennsylvania, to revise its intrastate toll rates for distances exceeding 36 miles so as to

conform to rates charged by the American Telephone and Telegraph Company for comparable distances for interstate services. The Commission found, after full hearing, that the rates charged for long-distance service in Pennsylvania were higher than the interstate rates for the same facilities for a like or greater distance, and constituted an unreasonable discrimination against intrastate patrons in violation of § 304 of the Public Utility Law of Pennsylvania of May 28, 1937, P. L. 1053. On appeal, the superior court of Pennsylvania affirmed the order (1939) 135 Pa Super Ct 218, 28 PUR(NS) 266, 5A(2d) 410. The supreme court of Pennsylvania refused appeal. The case comes here on appeal from the judgment of the superior court. See Pennsylvania R. Co. v. Public Service Commission (1919) 250 US 566, 63 L ed 1142, PUR1920A 909, 40 S Ct 36.

Appellant expressly disclaimed below, and also here, raising the question of confiscation. Its contentions are (1) that the Commission's order is wholly without support in the evidence and thus constitutes a denial of due process contrary to the Fourteenth Amendment; (2) that the order based on discrimination only, and prescribing rates not found to be reasonable and depriving appellant of considerable revenue, is arbitrary and hence a denial of due process; and (3) that the order is a regulation of interstate rates and imposes a direct burden upon interstate commerce.

[1, 2] As to the first contention, it appears that the state court heard the appeal judicially and decided that there was evidence justifying the finding of the Commission of unreasonable discrimination in the transaction of its intrastate business. In the absence of other constitutional objections, it cannot be said that a state court denies due process when on appropriate hearing it determines that there is evidence to sustain a finding of the violation of state law with respect to the conduct of local affairs. The contention that such a decision is erroneous does not present a Federal question. Arrowsmith v. Harmoning (1886) 118 US 194, 196, 30 L ed 243, 6 S Ct 1023; Bonner v. Gorman (1909) 213 US 86, 91, 53 L ed 709, 711, 29 S Ct 483; American R. Express Co. v. Kentucky (1927) 273 US 269, 273, 71 L ed 639, 641, 47 S Ct 353.

[3] As to the second contention, where there is no claim of confiscation, the state authority is competent to establish intrastate rates and in so doing to decide what constitutes an unreasonable discrimination with respect to intrastate traffic. See Stone v. Farmers' Loan & Trust Co. (1886) 116 US 307, 325, 29 L ed 636, 642, 6 S Ct 334, 388, 1191; Portland R. Light & P. Co. v. Railroad Commission (1913) 229 US 397, 410, 57 L ed 1248, 1258, 33 S Ct 820; Los Angeles Gas & E. Corp. v. California R. Commission, 289 US 287, 304, 305, 77 L ed 1180, 1191, 1192, PUR1933C 229, 53 S Ct 637; West Ohio Gas Co. v. Ohio Pub. Utilities Commission (1935) 294 US 63, 70, 79 L ed 761, 768, 6 PUR (NS) 449, 55 S Ct 316.

[4] Finally, it appears that the Commission's order related exclusively to intrastate traffic and that there was no attempt to regulate interstate rates.

The appeal is dismissed for want of a substantial Federal question.

SECURITIES AND EXCHANGE COMMISSION

Re North American Company

[File No. 46–187.]

Re North American Light & Power Company

[File No. 43–255.]

[Release No. 1903.]

Security issues, § 44 — Stock issue to parent corporation — Compliance with court decree.

1. No adverse finding should be made under any subdivision of § 7(d) of the Holding Company Act in so far as proposal to issue and sell stock relates to its issue and sale by a subsidiary of a registered holding company to the holding company itself, where the courts have found that advances by the holding company to the subsidiary should be represented by common stock and not by notes, and that notes illegally issued should be surrendered and common stock issued in lieu thereof, to the advantage of the subsidiary and its investors, p. 313.

Intercorporate relations, § 18.1 — Stock acquisition — Necessity of authorization.

2. An application by a registered holding company for authority to acquire common stock of a subsidiary under § 9(c) of the Holding Company Act is unnecessary, since such acquisition, under Rule U–9C–3 (14), is exempt from the requirement of prior authorization, where the acquisition is for cash, the security is issued by a majority owned subsidiary which is organized under the laws of one of the states, and substantially all of gross revenues on a consolidated basis are derived from business done and performed within the United States, p. 314.

Security issues, § 120 — Approval of speculative offering — Compliance with court decree — Preëmptive rights of stockholders — Conditions.

3. An offering of common stock, by a subsidiary of a registered holding company, to stockholders other than the parent corporation may be permitted even though the security is of a speculative nature and purchases of the stock would not be justified at the offering price, where the offering is made in accordance with a judicial decree in order to carry out the preëmptive rights of the stockholders; but such offering should be subject to the condition that appropriate notice be given as to the nature of the security, and, if any stockholder inadvertently accepts the offer to purchase, the corporation after consultation with the staff of the Securities and Exchange Commission must communicate with the intending purchaser and call his attention to the market price and to the findings of the Commission and give him an opportunity to rescind his purchase, p. 314.

[January 26, 1940.]

RE NORTH AMERICAN CO.

DECLARATION *pursuant to § 7 of the Public Utility Holding Company Act regarding proposed issue and sale of common stock by a subsidiary of a registered holding company, and application by the holding company for order exempting proposed acquisition of such stock, or, in the alternative, for approval of the acquisition; declaration permitted to become effective subject to conditions, and application for acquisition authority dismissed as unnecessary.*

APPEARANCES: Carl S. Stern and Ralph C. Binford of the Public Utilities Division of the Commission; Charles S. Hamilton, Jr., of New York, New York, for the North American Company and North American Light & Power Company; William N. Dederick of New York, New York, for John H. Murphy; Lawrence R. Condon and Robert W. Woodruff of New York, New York, for John W. Walters, intervener.

By the COMMISSION: North American Light & Power Company (hereinafter called "Power Company"), a registered holding company and a subsidiary of the North American Company (hereinafter called "North American"), a registered holding company, has filed a declaration pursuant to § 7 of the Public Utility Holding Company Act of 1935, 15 USCA, § 79g, regarding the proposed issue and sale of 2,666,667 shares of Power Company's common stock to North American and other stockholders of Power Company.

North American has filed an application for an order under § 9(c) of the act exempting the proposed acquisition of the common stock by it from the provisions of § 9(a), or, in the alternative, for approval of such proposed acquisition pursuant to § 10 of the act.

A hearing was held upon said declaration and application, as amended, after appropriate notice.

The Parties

Power Company, a Delaware corporation, controls, through stock ownership, public utility companies operating in the states of Kansas, Missouri, Nebraska, and Illinois, and other nonoperating and inactive companies. North American owns approximately 73 per cent of the common stock of Power Company.

The Background of the Proceedings

The applications before the Commission spring from a contract dated March 27, 1931, and a court decree following a litigation with respect to that contract. Power Company was desirous of issuing and selling $10,000,000 principal amount of serial notes, retirable $2,000,000 a year over a period of five years, for the purpose of retiring bank loans and reducing open account indebtedness to a subsidiary. To enable the transaction to be consummated Power Company entered into the contract in question wherein it agreed to make an offering of its common stock annually to all of its common stockholders, ratably in

proportion to their respective holdings, at a price of approximately 75 per cent of the prevailing market price in amounts sufficient to assure Power Company the necessary $2,000,000 on each serial maturity, and North American [1] agreed that it would take up at that price whatever stock the other stockholders of Power Company failed to subscribe for.

The contract provided that in the event that it was legally impossible for Power Company to offer the shares of common *stock*. North American would meet the obligation by purchasing the then maturing serial *notes*.

During the years 1932, 1933, and 1934 North American lived up to the contract, purchasing stock not otherwise subscribed for.[2]

In 1935 and 1936 North American, which was then in control of Power Company, claimed that it was legally impossible for Power Company to issue stock pursuant to the contract. Accordingly when it advanced money for the payment of the serial notes maturing in those years it received notes, bearing 5 per cent interest,[3] of Power Company in return for such advances instead of stock.

The Litigation

Certain preferred stockholders, claiming that the failure of North American to take stock in 1935 and 1936 was in violation of the contract, brought suit to require that the contract be lived up to. The district court for the southern district of New York held [4] that North American should have taken the stock, and decreed that the notes were unenforceable, that the $500,000 of interest paid by North American be refunded, with interest at 6 per cent, and that stock be issued to North American in lieu of the notes. The price per share which North American was required to pay was fixed by the court in relation to the market prices in existence in March of 1935 and 1936, when the stock should have been issued. The district court decreed that 2,000,000 shares should be issued at $1, the price fixed for 1935, and 666,667 shares at $3 per share, the price fixed for 1936.

The circuit court of appeals for the second circuit affirmed the decrees with a modification,[5] requiring that Power Company should first offer the stock to persons who were stockholders of record of Power Company on March 5, 1935 and 1936.[6] The circuit court said (106 F(2d) at p. 82):

"An offer by Power Company should be made to all its stockholders and not to North American alone as

[1] The contract constituted a joint and several obligation of North American and of Middle West Utilities Company, the latter becoming bankrupt, the entire burden fell upon North American. At the date of the contract North American held approximately 43 per cent of the common stock of Power Company, and interests affiliated with Middle West Utilities Company held approximately the same amount.

[2] It is set forth in the opinion of the district court that in 1932 the stockholders, other than North American, subscribed to $2,490 of stock at the rate of $15 a share, in 1933, $215,740 at the rate of $2 a share. In 1934 North American took up the entire $2,000,000, the other stockholders having waived their rights. North American now holds 2,661,216 shares of the 3,621,392 common shares outstanding.

[3] The interest paid by Power Company ($500,000) was held in a reserve account by North American and was not taken into its income account.

[4] Murphy v. North American Co. (1938) 24 F Supp 471, per Woolsey, J.

[5] Murphy v. North American Light & P. Co. (1939) 106 F(2d) 74, per A. N. Hand, Patterson concurring, Swan dissenting in part.

[6] The district court, while decreeing specific performance by North American, had found

the decrees have provided. Accordingly, there must be a modification of the decrees in respect to the form of the offerings. *Justice to the other stockholders requires that they should not be deprived of their preëmptive rights to the stock issuable either in 1935 or 1936.*" (Italics added.)

The decrees of the district court, as now modified, provide for the offerings to be made in accordance with the opinion of the circuit court, but, likewise, in accordance with the opinion of the circuit court, the making of such offerings is conditioned upon prior approval thereof by this Commission. The decrees provide that North American shall take all stock not subscribed for by other stockholders, shall receive the proceeds of sales to other stockholders, and, in turn, shall surrender the Power Company notes, repay interest collected (with interest thereon) and cancel accrued interest. The court retains jurisdiction to grant further or different relief in the event that the action of this Commission is such that the procedure directed by the decrees cannot be followed.

The Pending Declaration and Application

The present proceedings are filed in compliance with the court decrees. They vary from the requirements of the decrees in one substantial respect. Power Company seeks to make the offer to the present common stockholders of record of Power Company as well as to those of record in March, 1935 and 1936. This is in order to cover the situation not met by the court decrees that the present stockholders of the company may have possible preëmptive rights, regardless of whether they were stockholders on March 5, 1935, and March 5, 1936.[7]

The relief provided by these decrees is thus, in effect, a rescission of the 1935 and 1936 note transactions and will in substance require specific performance of the contract. As a result, Power Company will have a $4,000,000 debt liability replaced by a common stock liability and its cash position will be improved by the repayment to it by North American of $500,000, plus interest.[8]

The issuance to North American of stock in lieu of the notes now held by it, in fulfilment of North American's contract obligation, raises little difficulty. The fact, however, that the common stock must be offered to persons other than North American and at varying prices requires further consideration into the nature of the securities offered to such stockholders.

Capitalization of the Declarant

The corporate capitalization (including surplus) of Power Company according to its books as of June 30, 1939, and its capitalization, as of the same date, after giving effect to the proposed transactions are as follows:

that it was too late to require an offering to other shareholders as a condition precedent to that performance.

[7] North American will waive any preëmptive rights which it may have to the extent necessary to permit offering to be made to such present shareholders upon a ratable basis proportionate to their common stockholdings.

[8] Interest upon the $500,000, at the date of decree totaled $79,481.79. Interest at the rate of 6 per cent will accrue from the date of the decree, to date of payment upon the aggregate of these two amounts, $579,489.79.

	Per Books	% of Total	Pro Forma	% of Total
Funded debt				
30-year Sinking-fund debt series A & B, 5½%, due 1956 [1]	$16,014,500	28.05	$16,014,500	27.83
20-year Debentures, series C, 5% due 1948	2,000,000	3.50	2,000,000	3.47
Total Debentures	$18,014,500	31.55	$18,014,500	31.30
Advance by the North American Company including interest	4,250,000	7.45	.....	....
Total Long-term debt	$22,264,500	39.00	$18,014,500	31.30
Preferred stock				
6% Cumulative, no par [2] ($100 liquidating value) 194,180 shares outstanding	$18,555,021	32.50	$18,555,021	32.24
Common stock and surplus				
Common stock $1 par value, outstanding shares [3]				
3,621,392 shares per books	$3,621,392	6.34	.....	....
6,288,059 shares pro forma	.....	...	$6,288,059	10.93
Surplus				
Capital	$18,361,386	32.16	$19,609,719	34.08[4]
Deficit since December 31, 1932	*5,708,192*	*10.00*	*4,921,392*	*8.55*[5]
Total Common Stock and Surplus	$16,274,586	28.50	$20,976,386	36.46
Total Capitalization	$57,094,107	100.00	$57,545,907	100.00

[1] After deducting treasury holdings of $507,500.
[2] As at June 30, 1939, there were $8,155,560 dividend arrears on the preferred stock amounting to $42 per share. As at December 31, 1939, these arrears amounted to $8,738,100, or $45 per share.
[3] After deducting 1,757.43 shares held in treasury.
[4] After credit of $1,333,333, arising from the proposed issue and sale of common stock, less estimated expenses of $85,000 in connection therewith.
[5] After refund of cash; cancellation of interest accrued on notes, less estimated Federal income taxes, aggregating $786,800.

Investments of Power Company

A comparison as of June 30, 1939, of the values of its investments as recorded on the books of Power Company with the underlying book values thereof as determined by the declarant shows the underlying book value to be substantially less as follows:

	Recorded [9] Values	Underlying [10] Book Values
Common stocks of subsidiaries consolidated	$26,736,340	$18,310,117
Preferred stocks of subsidiaries consolidated	4,578,957	4,608,700
Advances to subsidiaries consolidated		
Subsidiary investment companies	13,781,980	10,907,033
Other subsidiaries	2,189,564	2,046,506
Securities of affiliates not consolidated	907,156	911,000
Other security investments		
Northern Natural Gas Company common stock	6,745,710	8,055,075
Other investments	100,733	100,800
	$55,040,440	$44,939,231

[9] The values as recorded on the books of Power Company are carried, so far as can be determined, approximately at cost or less than cost.
[10] The underlying book values of the Power Company's investments, directly, in common stocks and, indirectly, in common stock underlying the Power Company's advance to a subsidiary consolidated are equivalent to 11.2 times income applicable thereto. This is shown by the following table for the twelve months ended June 30, 1939:

Earnings of Power Company

The consolidated income statement [11] of Power Company for the twelve months ended September 30, 1939, after giving effect to the proposed transaction, is as follows:

Operating revenues	$15,086,280
Operating expenses (including depreciation and taxes)	10,632,504
Net operating revenues	$4,453,776
Nonoperating revenues	853,415
Gross income	$5,307,191
Deductions (including preferred dividend requirements of subsidiaries consolidated)	3,479,562
Net income	$1,827,629
Preferred dividend requirements of the declarant	1,165,080
Balance available for common stock	$662,549

From the foregoing table it appears that the common stock, on a pro forma basis, earned 10.5 cents per share on the 6,288,059 shares to be outstanding, which amount would have been available for common stock dividends if it had not been for the preferred arrearages heretofore mentioned. These earnings on the common stock show a substantial and steady annual improvement over the $2,000,000 deficit after the preferred dividend requirements for the year ended December, 1933.[12]

These increases in earnings have continued, although there has been a substantial improvement in the provisions for maintenance and depreciation, the maintenance and depreciation over the last four years having aver-

	Underlying Book Values	Balance of Income Applicable	Underlying Book Values Equal to Times Balance of Income Available
Common stocks of subsidiaries consolidated	$18,310,117	$1,724,835	10.6
Advances to subsidiary investment companies, consolidated common stocks underlying	10,082,471	393,825	25.6
Common stock of Northern Natural Gas Company	8,055,075	1,137,179	7.08
Miscellaneous security investment	100,800	.....	..
	$36,548,463	$3,255,839	11.2
Preferred stocks and other advances	8,390,768		
	$44,939,231		

[11] The above pro forma income statement represents the consolidated income statement as per books adjusted to eliminate nonrecurring income and tax savings and to reduce interest charges to amounts based on present funded debt.

[12] The balance available for common stock of the declarant for the last six years on a consolidated basis was as follows:

Years	Gross Income	Balance Available for Common Stock*	Earnings per Share On Common Stock*
1933	$4,727,847	*$2,193,728*	*$0.65*
1934	4,626,264	*1,872,564*	*0.52*
1935	5,218,941	*1,225,734*†	*0.34*†
1936	5,171,239	*511,203*†	*0.14*†
1937	5,281,579	363,991†	0.10†
1938	5,218,575	*273,997*†	0.08†
Sept. 30, 1939 (Pro Forma)	5,307,191	662,549†	0.18†

Italics denote deficit.

*After provision for amount of preferred dividends. (Preferred dividends have been in arrears since July 1, 1932.)

†After adjustments to eliminate charges for interest paid or accrued on notes payable to North American which interest was ordered refunded or canceled in the decision of the court.

aged in excess of 19 per cent of the gross operating revenues.[13]

Power Company has furnished no evidence as to the possibilities of improved earnings arising through an increasing volume of business. An officer of Power Company testified that though the general trend of business has been upward, rates have a tendency to decrease and expenses to increase. However, this officer testified as to various possibilities which, apart from an increase in gross revenues, might, from a long-term view-point, result in an increase in the balance of net income available for common stock.[14] These possibilities, though not inherently unreasonable, are conjectural and wholly dependent on future happenings.

As regards the actual earnings of 10½ cents a share, it should be pointed out that the arrears on the preferred stock as at June 30, 1939, amount to $42 a share and that on the basis of present earnings it will take 12.4 years before there could be any payment of a dividend on the common stock.[15]

The Common Stock Equity Considered on Various Bases

Asset value.

The following is a tabulation of the asset values as at June 30, 1939, of the Power Company common stock, with adjustments as stated:

[13] Year Ended Dec. 31st	Consolidated Operating Revenues	Provision for Depreciation Reserves	%	Maintenance Expense	%
1933	$13,552,148	$1,481,511	9.2	$598,914	4.4
1934	13,949,248	1,692,941	12.1	483,482	3.5
1935	14,362,496	1,892,601	13.2	582,462	4.1
1936	14,684,309	2,223,135	15.1	691,427	4.7
1937	15,477,345	2,540,278	16.4	822,663	5.3
1938	14,744,462	2,203,509	14.9	755,429	5.1
Sept. 1939	15,086,280	2,272,198	15.1	660,250	4.4

[16]

		Per share on 6,288,059 shares common stock to be outstanding
Balance available for common stock of Power Company as shown on pro forma consolidated income statement	$662,549.29	10.5¢
Possible increases (tabulated from testimony)		
(1) Redemption of 6% and 7% Preferred stock of subsidiaries from proceeds of sale of 5% Preferred stocks:		
Kansas Power and Light Co.	110,683.00	
Missouri Power & Light Co.	46,702.00	2.5¢
	$819,934.29	13.0¢
(2) Redemption of $2,000,000 5% debentures of North American Light & Power Company from cash available on June 30, 1939	100,000.00	1.6¢
	$919,934.29	14.6¢
(3) Excess pro rata share of income over dividends received on investment in Northern Natural Gas Company	355,628.35	5.7¢
(4) Possible future income from investment in Illinois Iowa Power Company	526,488.00	8.3¢
	$1,802,050.64	28.6¢

[15] By the use of some of the current assets and the happening of some of the possibilities outlined, this period might be shortened.

	Equity Value per Share		Pro Forma Equity Value per Share	
	Per Books	Adjusted to Underlying Book Values of Investments	Per Books	Adjusted to Underlying Book Values of Investments
(1) Total common stock and surplus	$4.49	$1.70	$3.34	$1.74
(2) Reflecting preferred stock arrearages as at June 30, 1939 ($8,155,560)	2.24	None (Deficit 0.55)	2.04	0.44
(3) Same as (2) but reflecting in addition the difference between the liquidating value and stated value of the preferred stock ($862,979)	2.00	None (Deficit 0.78)	1.90	0.31[16]

Earnings value.

Any capitalization of present earnings will be misleading unless consideration is given to the fact that because of the arrears on the preferred stock, the earnings on the common may not be available for dividends for many years. This postponement of dividends must result, on any basis of calculation, in a marked reduction of any estimate of value which might be reached by capitalization of the present earnings.

Market Prices

From an exhibit submitted by Power Company, at the request of the Commission, it appears that the recent range and volume of trading in the common stock of Power Company upon the New York Curb Exchange has been as follows:

	October 1, 1939 to December 31, 1939	January 1, 1940 to January 15, 1940
Average of closing price	$1.0539	$1.0357
Volume of sales	22,400 shares	2,400 shares
High	$1-¼ (Oct. 2, 7, 23, Nov. 21)	$1-⅛ (Jan. 4, 11)
Low	$⅞ (Dec. 19, 20, 21, 23, 27, 29)	$1 (Jan. 2, 3, 9, 13, 15)

Conclusions

The issuance and sale to North American.

[1] The stock proposed to be issued meets the requirements of § 7(c) (1) (A) of the act since it is common stock having a par value, being without preference as to dividends or distribution over, and having at least equal voting rights with any outstanding securities of the declarant. No state Commission or state securities commission having jurisdiction in the premises has informed the Commission that any state laws which be applicable to the proposed transaction have not been complied with.

We accordingly consider whether there is any occasion for an adverse finding under any of the subdivisions of § 7(d).

North American in the years 1935 and 1936 advanced a total of $4,000,-

[16] An officer of the declarant stated that if (a) the investments were valued at their market values as at November 15, 1939, where market values were obtainable and where not obtainable at 11.9 times earnings available for investments, and (b) an allowance was made for the excess of liquidating value over stated value of the preferred stock, the declarant's common stock would have a value of zero on a pro forma basis.

000 to Power Company, receiving notes therefor. As between North American and Power Company, the courts have found that this investment should be represented by common stock and not by notes. The surrender of the notes and the issuance of common stock in lieu thereof is to the advantage of Power Company and its investors.

In view of these circumstances, we make no adverse findings under any subdivision of § 7(d) in so far as the present proposal relates to the issue and sale of stock by Power Company to North American.

[2] The acquisition by North American of such of the common stock proposed to be issued and sold by Power Company as is not subscribed for by other persons will be an acquisition for cash of a security issued by a majority-owned subsidiary thereof which is organized under the laws of one of the states and substantially all of whose gross revenues (on a consolidated basis) are derived from business done and performed within the United States. Such acquisition is, therefore, under our Rule U–9C–3 (14)[17] exempt from the requirement of prior authorization thereof by this Commission. The application of North American relative to such proposed acquisition is therefore unnecessary and will be dismissed.

The offering to the stockholders other than North American.

[3] The principal problem presented is whether the Commission may permit the issuance of the securities in order to carry out what the court has found to be the preëmptive rights of the common stockholders of Power Company. Granted that Power Company may issue the securities to North American, is there any occasion for adverse findings so far as those security holders are concerned who were under no contractual obligation to Power Company, but of whom the court has found that "justice . . . requires that they should not be deprived of their preëmptive rights?" [18]

Where such preëmptive rights exist—and we must assume in the presence of the decrees that they do exist—the question is not quite the same as it would be in the case of an original issue. Here, the stock is to be issued, and from the viewpoint of Power Company and its stockholders other than North American it is desirable that the stock should be issued to North American and the notes canceled.[19] But as a condition precedent to this desirable result the courts have required an offering to stockholders. A further question is whether the stockholders should be deprived of their right to prevent a dilution of their shares, although the securities are speculative in their nature and although if the

[17] Rule U–9C–3 (14) was amended January 20, 1940, but by Rule U–9C–5, adopted upon the same date, it was provided:

"Any exemption available under par. (14) of Rule U–9C–3 as in effect prior to January 20, 1940, shall continue applicable as to the acquisition of any securities the issuance and sale of which to the acquiring company are the subject of an application of declaration theretofore filed with the Commission pursuant to § 6(b) or 7 of the act."

[18] Murphy v. North American Light & P. Co. (1939) 106 F(2d) 74.

[19] The inequity of any result that might enable North American to retain the notes in violation of its obligation makes this case sui generis and accordingly our decision must be limited to its precise facts and cannot be regarded as establishing a precedent.

question came up apart from the contract and the court decrees thereon, we might seriously question whether the issuance of the securities would be consistent with the public interest. Viewing the question thus narrowly, we consider the proposed offerings.

The general language used in the opinion of the circuit court of appeals confined the offerings to the common stockholders as of March 5, 1935, and as of March 5, 1936. The common stockholders of Power Company other than North American were not represented in the litigation and it may well be that the present minority common stockholders are not now precluded from asserting that they have preëmptive rights, i. e., that preëmptive rights passed with the stock. For these reasons, in the present proceedings Power Company and North American are according preëmptive rights to existing stockholders as well as to those who held stock in March, 1935 and 1936.

The offer to the public (i. e., the stockholders[20] other than North American) will be of 2,000,000 shares at $1 per share, 666,667 shares at $3. The offering at $1 calls for a consideration of the following factors:

(a) The recent market value has ranged around $1. What the market value will be after the offering is made is a matter for conjecture.

(b) On an asset basis, after giving effect to the proposed transactions and adjusting book figures to the underlying book values of the investments of Power Company, there would be an equity per share of considerably less than $1. The precise figure is 31 cents; but if the underlying investments were written down to market values where market values were obtainable, and where not, adjusted to a capitalization of earnings on a basis of 8.4 per cent, the equity per share would be zero.

(c) The stock is earning 10.5 cents a share, but unless there are substantial improvements in the affairs of the company it will require upwards of twelve years to pay off the arrears in dividends on the preferred stock. Accordingly it would appear that if a value for this stock is computed upon the present earning basis, and then such twelve years' postponement of the receipt of dividends is taken into consideration by a reduction of that value, (through the use of a 6 per cent or 8 per cent interest figure), to present value, such present value would be less than $1.

(d) On the other hand, it must be observed that the condition of the company has shown a steady improvement over the last few years despite increasing allowances for maintenance and depreciation. In view of the appropriations now being made for maintenance and depreciation, it does not appear probable that it will be necessary that these appropriations will have to be increased in the future to the extent that they have been in the past. Moreover, an officer of Power Company has indicated possible improvements by way of increased dividends from subsidiaries, arising in part as the result of new construction which has not yet reached a paying basis, and reduced charges by appropriate refinancing which would tend to increase

[20] Only such portion of the stock so to be offered will be offered to minority shareholders as is proportionate to their present, 1935, and 1936 stock ownership, as hereinabove indicated.

the earnings on the common stock and so accelerate the period in which the arrears might be paid off.

The Commission, recognizing the speculative nature of the security that will be offered, to carry out the preëmptive rights of the stockholders, will require that an appropriate notice be given to the stockholders as to the nature of the security, and, with the offering so conditioned, does not find that it is required to make an adverse ruling under § 7.

A more troublesome question is raised by the offering of 666,667 shares at $3 a share. The court felt impelled to permit those who were stockholders in 1936 to exercise their preëmptive rights at $3, the figure determined in relation to the March, 1936, market value. It may be questioned whether it is realistic to offer at $3 when the present market value is approximately $1, whatever the market value in 1936 may have been, especially when at the same time precisely the same stock is being offered at $1 a share.

On the basis of asset value or present or even proximately prospective earnings, the $3 price would be hard to justify. No small stockholder would, as an officer of Power Company testified, be justified in paying $3 for the stock at this time when he could purchase it in the market for $1.

To change the terms of the decree would require a further submission to the court and possibly even an appeal to the circuit court of appeals, and would therefore involve further time and expense. To deny the application as to the $3 offering will mean the certainty of further delay and expense for the sole purpose of protecting against the extremely doubtful contingency what some of the public stockholders may wish to make an improvident investment. On the other hand, to permit the offering will mean that some persons may inadvertently exercise their options. To guard against an inadvertent exercise of the option, Power Company, after consultation with the staff of the Commission, has agreed that if any stockholder accepts the offer to purchase stock at $3 a share, it will communicate with the intending purchaser and call his attention to the market price and to these findings and give him an opportunity to rescind his purchase. With the offer so conditioned, any person who does purchase at $3 a share will do so with full knowledge of the facts.

In view of the considerations hereinabove set forth and of the desire of the Commission and of the parties that an end be brought to the pending litigation, and its attendant expense, the Commission does not find that the proposed offering as so conditioned will be detrimental to the public interest or to the interest of investors or consumers.

Order

An appropriate order will issue permitting the declaration of Power Company regarding the issue and sale of its common stock to become effective, and dismissing the application of North American as unnecessary. The order to be entered in so far as it permits the declaration to become effective will contain the following conditions:

(1) The notices sent to the present and former stockholders advising

them of their right to subscribe for the stock proposed to be issued and sold shall contain a statement that shall embody the following data:

(a) That the offerings are made pursuant to court decree; that the prices at which such stock is offered are fixed by such decree; that North American is required to purchase at the prices so fixed all stock not subscribed for by other stockholders.

(b) The closing price of such stock upon the New York Curb Exchange on the nearest practicable day to the date of the mailing of such notices, and in no event more than five days prior to the date of such mailing.

(c) Appropriate excerpts from the portion of our findings designated "conclusions."

The form of notice shall be submitted to this Commission before mailing and shall not be used if disapproved by the Commission.

(2) In the event that Power Company receives an order from a stockholder to purchase at a price of $3 per share, Power Company will immediately advise such person in writing by registered mail of the most recent closing price for common stock of the company on the New York Curb Exchange, stating that it is required so to do by order of this Commission, and to afford to such person the privilege of rescinding his order for the purchase of common stock at $3 a share within seven days from the date of the mailing of such advice by Power Company. A copy of these findings shall be enclosed with such letter of advice.

(3) That the proposed issue and sale shall be effected (except as expressly otherwise indicated in these findings and opinion) in accordance with the terms and conditions of, and for the purposes represented by, the declaration, as amended.

(4) That within ten days from the date of completion of such issue and sale, declarant shall file with this Commission a certificate of notification to the effect that such issue and sale have been effected in accordance with the terms and conditions of, and for the purposes represented by, the declaration, as amended (except as otherwise expressly indicated in these findings and opinion).

CALIFORNIA RAILROAD COMMISSION

Re California-Oregon Telephone Company

[Decision No. 32790, Application No. 22899.]

Security issues, § 106 — Sale price of bonds.

1. Bonds should be sold at not less than par instead of 95 per cent of their face value, p. 319.

Mortgages, § 5 — Indenture provisions — Determination of net earnings.

2. A provision in a bond indenture for determination of annual net earnings, in connection with a restriction on dividend payments, should obligate the company to determine such earnings according to the system of accounts prescribed by the Commission, or, in the absence of such a system of ac-

counts, according to sound telephone utility accounting practices, instead of merely providing that the determination shall be made according to sound telephone utility accounting practices, p. 319.

Mortgages, § 5 — Indenture provisions — Bond retirements — Duty of trustee.

3. A provision of an indenture securing a bond issue that any moneys paid to the corporate trustee and not expended within a period of two years after deposit of the moneys with the trustee shall be applied by the corporate trustee, as the company may direct, to the purchase of bonds of any series then outstanding, should be modified so as to require the corporate trustee to select in an impartial manner the bonds to be redeemed through the use of such funds, p. 320.

Security issues, § 111 — Conditions of approval — Revision of indenture.

4. An order authorizing a utility to issue bonds should not become effective until an appropriate indenture, modified in accordance with Commission requirements, to secure the payment of the bonds has been executed by the utility with the approval of the Commission, p. 320.

[February 6, 1940.]

APPLICATION *for authority to issue first mortgage bonds; application granted subject to modifications and conditions.*

By the COMMISSION: In this proceeding California-Oregon Telephone Co. asks permission to issue at not less than 95 per cent of their face value and accrued interest $20,000 of its 5 per cent first mortgage bonds and to execute an indenture to secure the payment of an authorized bond issue of $50,000.

California-Oregon Telephone Co. is a California corporation. It owns and operates a telephone plant and system at Tule lake and vicinity in Modoc and Siskiyou counties. The company's lines connect with the toll system of Columbia Utilities Company at the Oregon-California line (Hatfield) and with the system of the Public Utilities California Corporation at Perez, California. The Columbia Utilities Company, through stock ownership, controls applicant.

Mr. C. T. Leeds, Jr., an associate engineer of the Railroad Commission, inventoried and appraised the company's properties as of October 31, 1939. A copy of his report was supplied to applicant. Its general manager has advised the Commission in writing that applicant had no objection to said inventory and appraisal. In his report, Mr. C. T. Leeds, Jr., shows the historical cost of applicant's properties at $42,045.18 and the accrued depreciation at $5,956.44. The two amounts are segregated as follows:

	Estimated Cost	Accrued Depreciation
Organization	$704.20	.....
Franchises	250.00	.....
Buildings	80.71	$5.17
Central office equipment	755.00	167.61
Station apparatus	5,149.21	1,153.42
Station installations	539.48	.....
Drop and block wires	961.51	.....
P. B. X.	44.07	17.58
Booths and special fittings	6.71	1.36
Pole lines	21,385.31	3,614.12
Aerial cable	2,421.46	46.01
Aerial wire	9,154.25	906.27
Underground conduit	154.01	4.93
Furniture and office equipment	439.26	39.97
	$42,045.18	$5,956.44

The depreciated estimated cost of the properties is $36,088.74.

The company reports for 1937, operating revenues of $9,371.57, for 1938 operating revenues of $10,677.36, and for the first six months of 1939, operating revenues of $5,794.48.

[1] It is of record that applicant is indebted to Columbia Utilities Company in the amount of $16,333.66. It desires permission to issue its bonds for the purpose of paying this debt and providing itself with about $2,000 of cash needed to extend its telephone system in order that service may be given to new settlers in the Tule lake region. We believe that applicant's bond issue should be limited to $18,000, and that said bonds should be sold for not less than par.

As stated, applicant asks permission to execute an indenture to secure the payment of an authorized bond issue of not to exceed $50,000. Of these bonds, it proposes to issue presently $20,000 face amount. The issue, however, will be, by the order herein, limited to $18,000. Under applicant's present proposal the bonds will be dated July 1, 1939; bear interest at the rate of 5 per cent per annum, payable semiannually and mature serially as follows: $1,000 face amount during each of the years from July 1, 1941, to July 1, 1946, both inclusive, and $2,000 per annum for the years thereafter until all of said bonds are paid.

The company reserves the right to redeem said bonds on sixty days' notice. If they are redeemed on or before July 1, 1942, the company must pay the principal, the accrued interest, and a premium of 2½ per cent; if they are redeemed after July 1, 1942, but on or before July 1, 1944, the premium is 2 per cent; if they are redeemed after July 1, 1944, but on or before July 1, 1946, the premium is 1½ per cent; if they are redeemed after July 1, 1946, but on or before July 1, 1948, the premium is 1 per cent; if they are redeemed after July 1, 1948, and on or before July 1, 1950, the premium is ½ of 1 per cent. No premium is payable on bonds redeemed after July 1, 1950. We have no objection to the bonds being dated January 1, 1940, and other appropriate changes made in the dates just mentioned.

[2] Applicant has filed in this proceeding a copy of its proposed indenture. We have reviewed this indenture and believe that it should be modified in several respects. It occurs to us that the granting clauses would be less ambiguous if par. (a) of Division IV were eliminated in its entirety. Paragraph (b) of § 2, Art. I, and § 4 of Art. I of the indenture cover the same subject matter. In our opinion, par. (b) of said § 2 should be deleted. The second par. (c) under § 2 of Art. II makes a reference to depreciation charges to the extent set forth in § 9 of Art. III of the indenture. However, said § 9 of said Art. III does not relate to depreciation charges or depreciation expense and consequently one or the other of said section should be revised. Under § 11 of Art. III of the indenture, the company covenants that it will not declare or pay any cash dividend upon its capital stock of any classification, at any time outstanding, except out of earned surplus accumulated subsequent to July 1, 1939. The section then provides that the annual net earnings added to surplus shall be determined according to sound telephone utility accounting practices, and that the com-

pany will not pay any such cash dividends, in any event, to such an amount as will reduce the earned surplus of the company below an amount sufficient to pay in full the bonds maturing under the terms of the indenture at the next two maturity dates following the declaration of such dividends. This section should be revised, and as revised, obligate the company to determine its annual net earnings according to the system of accounts prescribed by the Railroad Commission of the state of California, or, in the absence of such a system of accounts, according to sound telelphone utility accounting practices.

[3] Section 3 of Art. V of the indenture provides that any moneys paid to the corporate trustee and not expended within a period of two years after the deposit of the moneys with the corporate trustee shall be applied by the corporate trustee, as the company may direct, to the purchase of bonds of any series then outstanding. This language, we believe, should be modified so as to require the corporate trustee to select in an impartial manner the bonds to be redeemed through the use of such funds.

[4] We believe that applicant should submit to the Commission a revised indenture securing the payment of its bonds, and that the order herein authorizing applicant to issue bonds should not become effective until the Commission has authorized applicant to secure an indenture for the payment of such bonds.

ORDER

The Commission having considered the request of California-Oregon Telephone Co. to issue $20,000 of bonds, and it being of the opinion that this is not a matter in which a hearing is necessary, and that applicant should be authorized, subject to the provisions of this order, to issue not exceeding $18,000 of first mortgage serial 5 per cent bonds for the purpose of paying indebtedness and constructing additions and betterments to its properties, and that the expenditures for such purposes are not in whole or in part reasonably chargeable to operating expenses or to income, therefore,

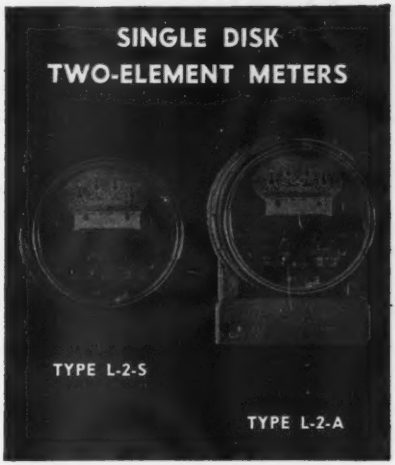
It is hereby *ordered* that the California-Oregon Telephone Co. may, after the effective date hereof and prior to August 1, 1940, issue at not less than par, $18,000 of its first mortgage serial 5 per cent bonds, and use the proceeds to pay indebtedness due Columbia Utilities Company and pay the cost of additions and betterments, to which reference is made in applicant's petition, or pay indebtedness incurred for that purpose.

It is hereby *further ordered* that the authority herein granted will not become effective until the Commission has authorized California-Oregon Telephone Co. to execute an indenture to secure the payment of said bonds, or until California-Oregon Telephone Co. has paid the minimum fee prescribed by § 57 of the Public Utilities Act, which minimum fee is $25.

It is hereby *further ordered* that California-Oregon Telephone Co. shall file with the Railroad Commission monthly reports in compliance with the Commission's general order No. 24-A, which order, in so far as applicable, is made a part of this order.

SANGAMO TYPE L-2 METERS

The Type L-2 two-element meters comprise two complete electro-magnetic elements driving a single disk. They are designed for modern "A" and "S" mountings, thus combining convenience in installation with a minimum of space requirements. Electrical characteristics meet all the requirements for modern meter accuracy and performance.



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SPRINGFIELD, ILLINOIS

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Many Utility Companies are saving money by using the Vari-Typer . . . the composing Type Writer with changeable faces and spaces. This compact office machine reduces composition and printing costs for rate schedules, office forms, bulletins, booklets, folders, etc., for either mimeograph or offset reproduction. Investigate the savings possible on all your required printing.

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Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

A.T.&T. Expansion Forecast By President Gifford

THE largest expansion program since 1931 was forecast recently by Walter P. Gifford, president of the American Telephone & Telegraph Co.

Based on construction activities to date this year the 1940 total telephone plant additions, replacements and betterments may be 15 per cent greater than in 1939 and the largest for any year since 1931, Mr. Gifford told stockholders at the annual meeting.

These operations, Mr. Gifford added, probably would not require new financing. If the construction program is realized it would result in net additions to plant of about $135,000,000 against $101,400,000 in 1939.

The Associated Bell companies anticipate a greater net gain in telephones this year than was recorded in 1939 which was the fourth best year in history in station increases.

Baltimore Transit Increases Trolley Coach Fleet

THE Baltimore Transit Company has added 40 more trolley coaches to its fleet, which now totals ninety-two modern vehicles of this type. Thirty-five of the coaches rolled into service recently when the Roland-Highlandtown line was changed over from trolley car to trolley coach operation. The five other coaches will be used to take care of increased riding on Line 27, augmenting 30 similar coaches placed in service there early in 1939.

The new coaches are 44-passenger Pullman-Standard trolley coaches. Thirty-eight of them are each equipped with one General Electric 1213 compound-wound motor and MRC control. All of them have the new "superquiet" CP-25 compressor.

Before they were placed in service, one of the new coaches was on exhibition, open for inspection at all times and with an attendant on duty to explain details.

DICKE TOOL CO., Inc.
DOWNERS GROVE, ILL.
Manufacturers of
Pole Line Construction Tools
They're Built for Hard Work

Cable Insulating Compound For Moist Locations

A special moisture resistant rubber compound developed for insulating wires and cables for use in moist locations without lead sheath, is described in detail in a bulletin recently issued by Crescent Insulated Wire & Cable Co., Trenton, N. J.

Although it is commonly thought that any rubber compound is waterproof, actually water will permeate rubber that is continually immersed for a period of time. For this reason the bulletin points out, it has been customary in the past to require a lead sheath on rubber insulated wires and cables installed in locations where moisture was present. Crescent "Impervex", as the compound is called, does not require a lead sheath because it is especially compounded of selected ingredients to resist moisture absorption.

"Impervex" was originally developed for use on underground secondary net work cable and hundreds of thousands of feet have been installed by leading utilities in the past eight years. During this time not one instance of failure has been reported, according to the manufacturer. Now this superior insulation is available for building wires and is approved by Underwriters' Laboratories for use in moist locations without lead sheath under Section 3035 of the National Electrical Code.

Tables in the bulletin give dimensions, weights and sizes of conduit required by N. E. C. for "Impervex" Building Wires and for lead-sheathed wires for purpose of comparison.

Convertible Hand Cleaner

A NEW vacuum cleaner, the "Floor Cruiser," described as two models in one because it may be used either as floor cleaner or a hand cleaner, has been introduced by the Westinghouse Electric & Manufacturing Company.

A motor-driven brush type model, the new cleaner is being offered for all light cleaning in homes and apartments. It has a light but strong Micarta body and a maroon dustproof moleskin bag. Weighing only five pounds when used as a hand cleaner, it is easily converted into a floor model by inserting it into an exclusive tubular steel frame.

No clamps, thumb screws, or other complicated mechanical devices are needed to hold the cleaner in place when it is being used as a floor model, but it remains locked firmly in position because of the precision construction.

Quality Trucks *with Truck Qualities*

CHEVROLET

Two things are demanded of a motor truck by wise buyers.

They demand quality trucks—*trucks made of high-grade materials, properly engineered, to insure long life and dependability.*

They demand truck qualities—*smooth, dependable power from a heavy-duty truck engine . . . strength to stand continuous operation at full capacity . . . fuel and oil economy that lasts the life of the truck.*

Chevrolet trucks give these two things in full measure—every desirable truck quality is built into them and safeguarded for the life of the truck by highest-quality materials. For Chevrolet trucks are all-truck—in design, and in every unit . . . from special *truck* engines through every unit of the chassis.

That's the way Chevrolet trucks have been built through the years . . . and that's why they have won and held first place in the industry.

CHEVROLET MOTOR DIVISION, *General Motors Sales Corporation*, DETROIT, MICHIGAN

CHEVROLET TRUCKS

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After being converted into a floor cleaner, it is similar in appearance to conventional floor models, and will do practically the same work. It has as much suction as many ordinary conventional cleaners.

The cleaner is priced at $18.95, complete with frame.

Lang Heads Apparatus Sales—Other G E Appointments

CHESTER H. LANG, manager of General Electric's advertising and sales promotion activities since 1932, has been named manager of apparatus sales and vice chairman of the company's apparatus sales committee, according to a recent announcement. The apparatus or capital goods lines range from big turbines to tiny motors.

As advertising manager, and a member of both the apparatus and appliance sales committees Mr. Lang has been intimately associated with all commercial activities of the company. He organized its market research bureau in 1932, a section devoted to sales analysis of existing and contemplated products.

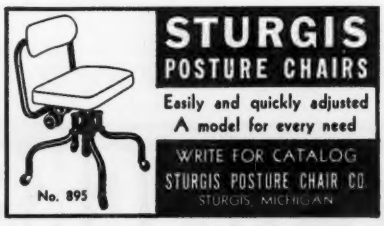
Robert S. Peare, president and general manager of the Maqua Company, a large printing and engraving concern affiliated with General Electric in Schenectady, succeeds Mr. Lang as manager of the publicity department.

In his new position Mr. Peare will also serve as manager of broadcasting for the company with responsibility for operation of its stations, WGY, Schenectady; KGO, Oakland and KOA, Denver, as well as international broadcasting stations WGEO, WGEA, and KGEI; frequency - modulation station W2XOY, and television station W2XB.

The appointment of J. G. Gidley, as manager of sales, Schenectady section, turbine division, has been announced by C. S. Coggeshall, manager of the General Electric turbine division. Mr. Gidley will be responsible for the sale of all turbines manufactured in Schenectady. He succeeds R. S. Neblett who has been assistant manager of the turbine division since July of 1939.

David C. Prince of Philadelphia, since 1931 chief engineer of the switchgear department of the General Electric Company, has been named manager of the commercial engineering department, succeeding the late Vice President E. W. Allen. Mr. Prince, whose headquarters will be in Schenectady, has also been named a member of the company's advisory committee and the apparatus sales committee.

Mr. Prince is the holder of 73 patents and was one of eight G-E engineers recently selected as "Modern Pioneers of Industry" by the National Association of Manufacturers.



Gas Utility Expansion Plans Total $3,000,000

THE Southern Natural Gas Company recently announced that it plans increases in its system which will involve the expenditure of about $3,000,000.

The additions will involve the installation of approximately 80 miles of 22-inch transmission lines paralleling the existing system which extends from Monroe, La., across Mississippi and Alabama, via Birmingham, to Atlanta, with branch lines in Georgia and Alabama.

Approximately 13,000 h.p. additional compressing facilities will be installed at the various compressor stations located in the four states of operations. These additional facilities will increase the capacity of the company's system by approximately 30,000,000 cubic feet of natural gas per day.

Recently the company also announced that it proposed to build a eight-inch transmission line from a point near Calhoun, Ga., to Chattanooga to supply the distribution system of that city with natural gas. This construction includes the building of a compressor station near Cedartown, Ga.

New Plant for Union Electric

THE Union Electric Company of Missouri, a subsidiary of the North American Company, recently announced plans for a steam electric power plant containing two 40,000-kilowatt turbine generators to supply power to the company's system in Illinois, Iowa and Missouri. The new plant will be located at Venice, Ill. Its design and construction will be in charge of the Stone & Webster Engineering Corp.

Two-Wire A-C Pilot Relay For Line Protection

A SINGLE unit induction-cylinder relay, Type CPD, for complete high-speed (one-cycle) pilot-wire protection of transmission lines is announced by the General Electric Company. Only one of these relays is needed at each station, with two pilot wires between stations, to obtain complete differential protection of a line section both for phase and ground faults. Each relay is completely self-contained, requiring connection only to the current transformers, pilot wire, and trip circuit.

The new relay combines the conventional opposed voltage pilot system with the modern induction cup-type relay element to give a pilot relay system which has the following features:

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There's no "weak link" in a welded piping system when Grinnell Welding Fittings are used. For these fittings permit every weld to be a plain circumferential butt weld — strong, easily made by any qualified pipe welder.

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For a simple, economical welded piping job, free of ragged sharp corners, slag inside the pipe, nondescript welds — for assurance of clean, smooth inside surfaces, specify Grinnell Welding Fittings. 32-page descriptive catalog on request. Grinnell Company, Inc., Executive Offices, Providence, R. I. Branch offices in principal cities.

WELDING FITTINGS BY **GRINNELL**

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1. A single cup element for each terminal.
2. Operates for any type of fault—three-phase, phase-to-phase, two-phase-to-ground, or single-phase-to-ground.
3. Requires only two pilot wires.
4. Normally circulates no current through the pilot system.
5. Limits the maximum voltage on the pilot circuit to 120-v and the maximum current to 0.1 amp.
6. Will not trip on out-of-step.
7. Has percentage slope characteristic.
8. Is easy to adjust.

The Type CPD operates on the opposed voltage principle, using a single current obtained from a mixing autotransformer which is translated into voltage for application to the pilot system. It has adjustments to compensate for variation in pilot-wire resistances and to obtain different sensitivities for ground fault protection.

Grinnell Appoints Fleming

JAMES D. Fleming has been appointed vice-president and sales manager of Grinnell Company, Inc., Providence, Rhode Island.

James D. Fleming, Vice President—Sales Manager, Grinnell Company, Inc.

Previous to this appointment, Mr. Fleming was vice-president and manager of the Grinnell Company of the Pacific, a subsidiary. He has been associated with that company since 1919. He will continue to manage the Pacific Company but will be located at the company's home office at Providence, R. I.

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Chrysler Plant Enlarged

IMPROVEMENT of Chrysler Corporation's plant facilities proceeded when construction was begun recently on a new 78,000 square foot manufacturing building in its Highland Park Plant, according to Herman L. Weckler, vice president in charge of operations.

"The construction of this new building," Mr. Weckler stated, "is in line with our regular policy of constantly modernizing and improving our manufacturing facilities in order that we may be able to continue to serve the public with quality merchandise."

This new building will take the place of two former buildings and will improve the facilities of the Highland Park operations. In Chrysler Corporation's Highland Park Plant are carried on the manufacture of a wide variety of parts for all of its passenger cars and trucks, a large part of its export activities, and all of its engineering and research work.

Westinghouse Orders Increase

GEORGE H. Bucher, president of the Westinghouse Electric and Manufacturing Company recently reported that the business outlook was very encouraging and that orders booked by Westinghouse in the first quarter of 1940 were more than 30 per cent above the same quarter last year, or $65,250,000 against $50,121,000.

San Diego Plans New Line

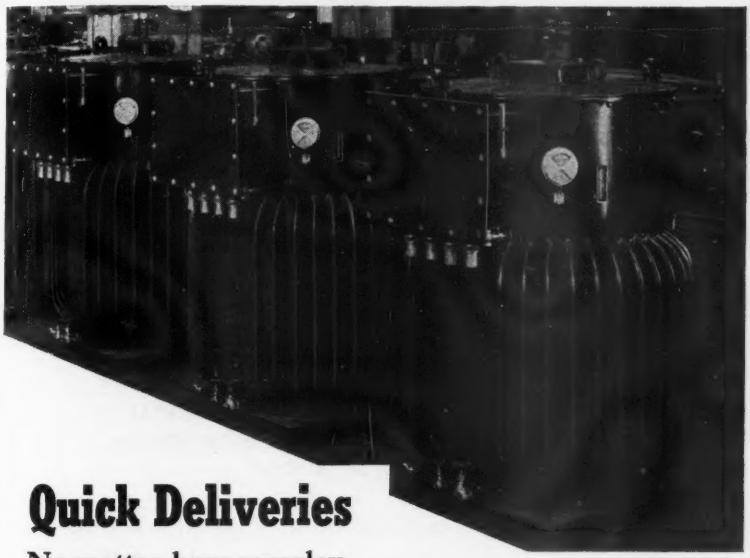
SAN Diego Consolidated Gas & Electric Co. plans to build a 105-mile transmission line to connect with Southern California Edison Co. lines on the north side of San Diego River, according to a recent announcement. The new line, together with a 35,000 kw. substation at the connection point, will cost $1,159,700 and will, it is estimated, take care of growth of the company's business for at least two or three years.

"Engineering Progress"

ELECTRICITY'S achievements in 1939 recently moved into the "big circulation" class of non-fiction publications, with the distribution of approximately 100,000 copies of "Engineering Progress" by the Westinghouse Electric and Manufacturing Company.

Reporting outstanding new applications and developments in the electrical industry, "Engineering Progress" has been published annually for the past 14 years for the information of engineers and technical men throughout the world. This year the Company doubled the book's circulation by mailing a copy to each of its 50,000 stockholders.

TOMORROW'S TREND *TODAY* ..IN TRANSFORMERS



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The Handee is really a small "power house" that can be carried to any part of your plant and used wherever there is an electric outlet, to repair some hard-to-get-at part on a machine without removing the part —to smooth off rough edges — to bore tiny holes in metals — to clean delicate mechanisms, etc. Grinds, Drills, Polishes, Engraves, Sharpens, Carves, Cleans, Sands, Saws, etc.

The Handee uses 300 accessories. Used and endorsed by mechanics, repairmen and hobbyists. Weighs only 12 ounces. Speed 25,000 r.p.m. Nationally advertised at $18.50 with 6 Accessories.

CHICAGO MOUNTED WHEELS OF V/T SUPER BOND

150% Longer Life V/T Super Bond is the greatest forward step in 30 years. Chicago Mounted Wheels made of it have 150% to 300% longer life, according to tests in many plants on snagging and exacting operations. Will not ridge on welds, sharp corners, sinking dies, barbering, etc. They're tougher, can take more punishment, grind more pieces per wheel, faster and without sacrifice of cutting action. There's a shape and size to handle every grinding job. Let us send you a V/T Super Bond Wheel without cost or obligation. Tell us the kind of job, type of equipment you use and size wheel preferred.

FREE MOUNTED WHEEL CHART—Ideal for ready reference in the shop. A Wall Chart 22 x 15" showing actual size and shape of every standard Chicago Mounted Wheel.

Send for Catalog of Complete Line

CHICAGO WHEEL & MFG. CO.

Makers of Quality Products for 40 Years

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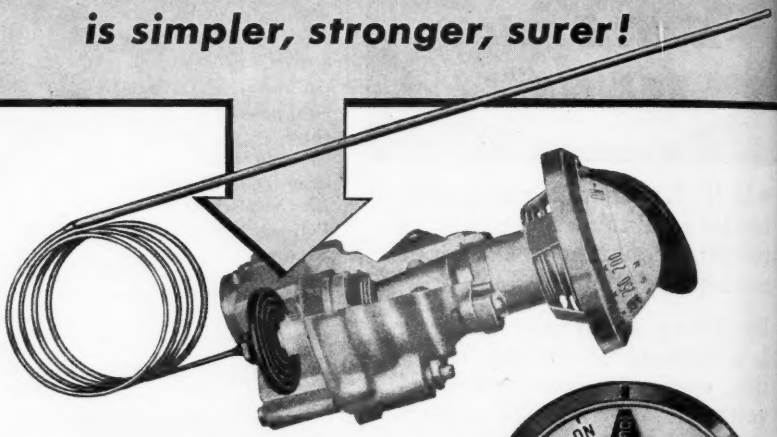
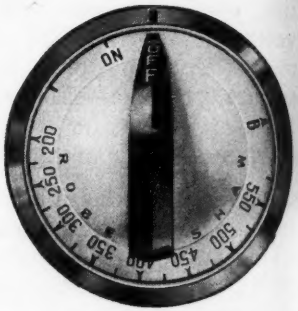
More than a million in use show that

THE PATENTED ROBERTSHAW DIASTAT

is simpler, stronger, surer!





All Robertshaw products enjoy the great advantage of the work carried on constantly at the Robertshaw Research Laboratory, a laboratory devoted exclusively to the development of improved designs and production methods in the field of automatic temperature control.

Robertshaw's stainless steel Diastat – electric-welded, solderless, non-corroding – is a Robertshaw product throughout. Into it has gone the best that forty years of manufacturing experience – plus unequaled research, product development and manufacturing facilities – provide.

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MORE INCOME FROM GAS RANGES. This different sales manual not only shows your salesmen *how* to increase their earnings but fires them with enthusiasm to go out and do it. Write for a copy.

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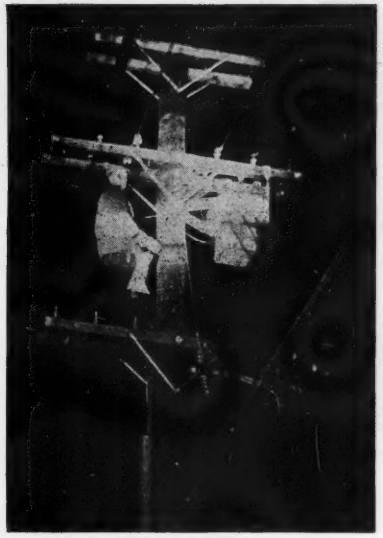


Equip your emergency repair crews with Master-Lights! Watch overtime payrolls shrink! These powerful, brilliant lights promote speedy work—reduce the hours used in locating trouble spots at night. Darkness, snow, and fog can't defeat the high power of Master-Lights. They let your men SEE, no matter what the weather!

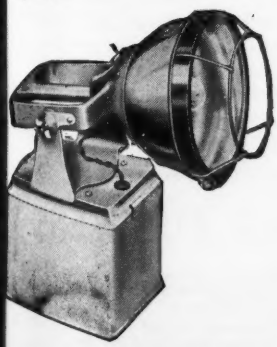
A MASTER-LIGHT FOR YOUR EVERY NEED

67 different types of Master-Lights, developed in our 25 years of experience with your problems, are ready to help you. Two of the most popular are illustrated on this page. Read their specifications—then send for our latest folder on Master-Lights for Public Utilities Corporations.

FOR HAND USE

TYPE WS

Portable search or work light. 250,000 c.p. beam as search-light. Rechargeable battery gives 8 hours continuous high power, 24 hours continuous work light. Weight 12 pounds.



NOTE TO PURCHASING AGENTS

We allow your corporation all discounts — you get straight manufacturer's price. Any light sent on 30-day free trial on request. Remember —Master-Lights may save you MORE than their cost in just one emergency.

LET US HELP YOU NOW

Over 500 U. S. Public Utilities Corporations equip their repair crews with Master-Lights — because we furnish exactly the lights they need. Let us meet YOUR needs in lights for repair and emergency crews! Send NOW for a new 1940 Master-Light Folder that tells you quickly about lights that will save money for you. Write now to—

FOR REPAIR CARS

TYPE T

Roof mounted search-light, inside control. 250,000 c.p. beam, mile range, turns 360°. No gears. Points in any direction as easily as your finger.

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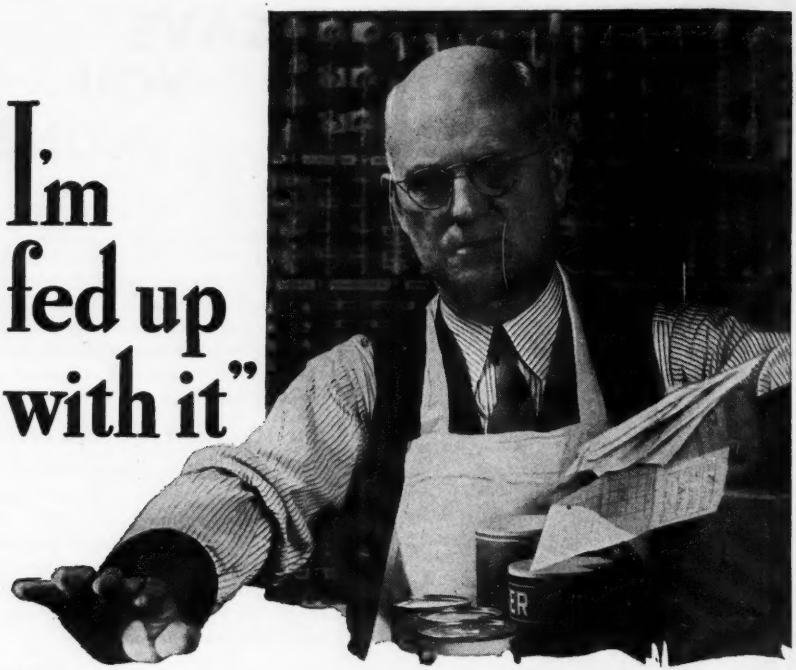
"I'm fed up with it"



"THERE are twenty-eight government agencies dictating the way things must be made and sold.

"Not content with that, some of them —and some trouble-makers outside of government—send out printed matter calculated to throw suspicion on all products, selling and advertising.

" 'Misgraded!' 'Misbranded!' 'Misrepresented!' 'Overpriced!' 'Shortweight!' 'Dangerous!' 'Poison!' They're actually shooing people away from my counter with statements like that.

"I work hard to sell my customers better, tastier, fresher packed foods all the time. Then these busy-bodies come along with their talk about protecting the consumer, and they tear down good will and hamper progress.

"When we find dishonesty in business let's use the laws already on our books to punish it—the fraud laws, for instance. But let's not slander all trade and smother it under a swarm of Federal agencies.

"We need confidence in each other, not hate and suspicion. We need a freer, bigger flow of goods to bring back prosperity and make more jobs."

Friend merchant is right. We can't stimulate employment or that hoped-for ten billion dollar increase in the national income by impeding distribution of goods and services. It was aggressive American advertising and selling that brought us the highest living standard in the world—and can again, with encouragement. *What helps business helps you.*

This message is published by

NATION'S BUSINESS

It is the 41st of a series contributed toward a better understanding of the American system of free business enterprise. Regardless of your political affiliations, if you have a point of view you would like to express on developments now shaping in the field of public policy relative to distribution, why not write to your Congressman or Senator?

You can organize a centralized "Customer Relations Department" at once without any change in your record equipment through—

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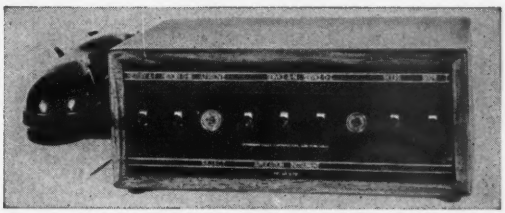
Customer-Relations Equipment



We will gladly demonstrate the Dictograph method of centralized information planned to work in with your present credit, service, meter and bookkeeping records.

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Potomac Electric Power Company	Washington, D. C.
United Gas Corporation	Houston, Texas
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May we have our Special Utility representative call to discuss your problem with you . . . no obligation.

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☐ *Please have representative call.*

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Let's settle this matter of Paper

TAKE ten minutes to examine your accounting forms and books, office forms, control records and all the other vital records of your business.

Look for torn or dog-eared corners and edges, faint or blurred typing, scratchy writing, crude erasures, poor printing or ruling. These are the signs that betray poor paper. They are the stop signals that warn of waste, errors and delays. They mean that for a slight economy in paper, the least expensive item, the total investment in your record keeping and accounting system i being endangered.

Do something about it!

Ask your supplier to put the nex batch of forms on 85% Rag Conten Waverly Ledger. Note how much bet ter they look, how they stand up, ho well they take typing, writing and era ing. See how much quicker they file o bind, how much faster the work is done Then settle the matter of paper. *Mak Weston's* WAVERLY LEDGER you *standard.*

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DODGE *Job-Rated* TRUCKS

LOOK! COMPARE DODGE TRUCKS WITH THOSE MADE BY TWO OTHER COMPANIES MANUFACTURING LOW-PRICED TRUCKS

DODGE OFFERS FAR WIDER SELECTION

COMPARISON	DODGE TRUCKS	COMPANY "A"	COMPANY "B"
Number of ENGINES	6	1	3
Number of WHEELBASES	17	9	6
Number of GEAR RATIOS	16	6	9
Number of CAPACITIES	6 ½ to 3-Ton	3 ½ to 1½-Ton	4 ½ to 1½-Ton
Number of STD. CHASSIS and BODY MODELS	96	58	42
PRICES begin at	$465	$450	$474.18

Prices shown are for ½-ton chassis with flat face cowl delivered at Main Factory, federal taxes included—state and local taxes extra. Prices subject to change without notice. Figures used in the above chart are based on published data.

Dodge 1½-Ton, Cab-Over-Engine Chassis and Cab, 105" wheelbase. **$825†**

Dodge 1½-Ton 9-foot Stake, 133" wheelbase **$800**

Job-Rated To Fit Tough Jobs...Save Money!

RIGHT!—they're great performers—these big 1½-ton Dodge Job-Rated trucks! They'll do a great job for YOU, too—and at lower cost!

Their 92-horsepower Dodge truck engine is exactly the right engine to deliver top performance—with maximum economy! Clutch, transmission, rear axle, springs and brakes—all are "sized" for the truck so the truck will *fit the job!*

With 7 wheelbases, which include the sensational new Cab-Over-Engine—you can get a Dodge Job-Rated 1½-tonner to fit YOUR job—and to save YOU money! Dodge Job-Rated trucks are priced with the lowest for every capacity! See your Dodge dealer for easy budget terms.

†Prices—delivered at Detroit including Federal Taxes. Dual wheels, transportation, state and local taxes (if any) extra.

GET THIS FREE BOOKLET—READ AND SAVE

Learn how a truck to-fit-the-job can save YOU money! Ask your Dodge dealer or write Dodge Division, Chrysler Corporation, Detroit, Mich.

DEPEND ON DODGE *Job-Rated* TRUCKS

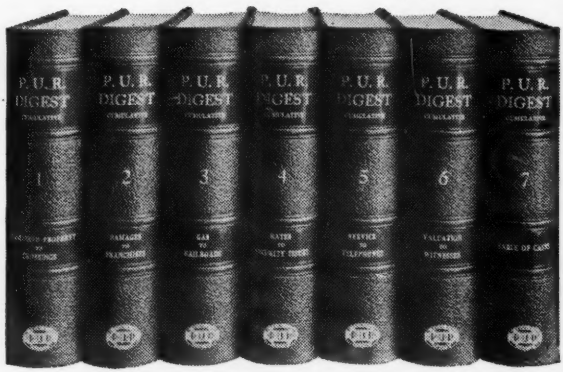
SEE YOUR DODGE DEALER FOR DEPENDABLE USED TRUCKS

½ TO 3 TON CAPACITIES . . . 96 STANDARD CHASSIS AND BODY MODELS ON 17 WHEELBASES

*Job-Rated MEANS: A TRUCK THAT FITS YOUR

P. U. R. DIGEST

CUMULATIVE



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EIGHTH ANNUAL CONVENTION

of the

EDISON ELECTRIC INSTITUTE

June 3, 4, 5 and 6, 1940

CONVENTION AUDITORIUM
Atlantic City, New Jersey

Schedule of Events

At the Auditorium
General Sessions

Tuesday morning, June 4th

Tuesday afternoon, June 4th

Wednesday morning, June 5th

Wednesday afternoon, June 5th

Wednesday evening, June 5th

Thursday morning, June 6th

Hotel Traymore
Social Events

Dancing
Monday evening, June 3rd

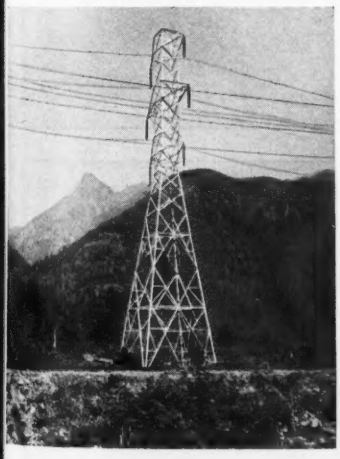
Ladies Tea
Tuesday afternoon, June 4th

Dancing
Tuesday evening, June 4th

Luncheon Meeting
Thursday, June 6th

Friday, June 7th, will be Edison Electric Institute Day at the New York World's Fair, and all delegates are invited.

Convention delegates and guests are urged to secure hotel accommodations now.



The armor rods being installed here, for example, are classed as "right" by men who know. Power line conductors, *no matter what they're made of*, have a tendency to vibrate under certain conditions. Armor rods offer protection against fatigue, flash-overs and wear at points of support.

Armor rods are but one of the devices recommended by Alcoa engineers for increasing a line's dependability. A.C.S.R. engineering standards include complete wire stringing data and a perfected system of vibration control.

You may have this engineering data, Write ALUMINUM COMPANY OF AMERICA, 2134 Gulf Bldg., Pittsburgh, Pa.

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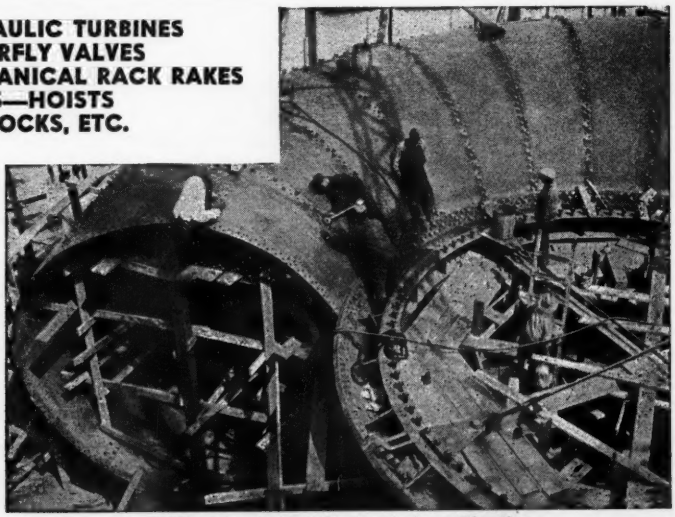

Bolting the Spiral Casing before Riveting

NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY
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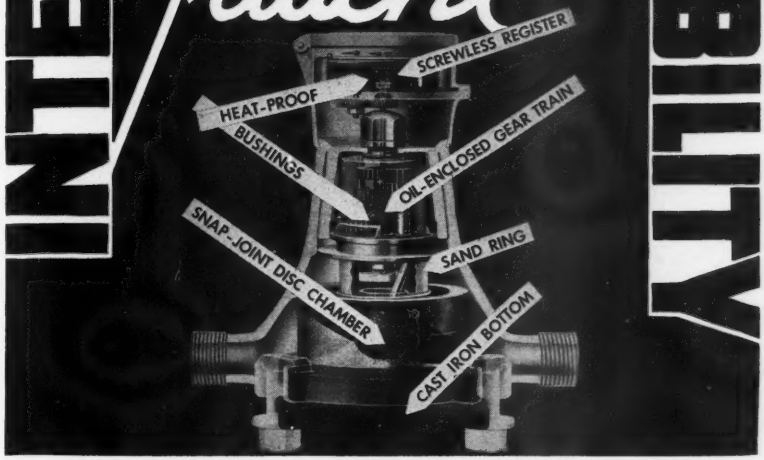
INTER-CHANGE-ABILITY

Trident



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Screwless Register . . . cuss-proof. Spring clips. No screws to rust or break.

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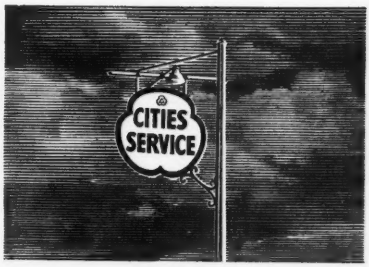
Cities Service Oil Company engineers are concentrating their efforts daily on solving the various lubrication problems with which industry is faced.

Wherever moving surfaces come together, no matter what the speed or load, Cities Service can recommend authoritatively the correct lubricants to use. Whether you need heavy greases for massive gears or the lightest of oils for delicate precision machines, Cities Service is ready to fill your every need.



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